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Report by the independent Expert, Mr. Christian Tomuschat, on the situation of human rights in Guatemala, prepared in accordance with paragraph 14 of Commission resolution 1990/80

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INTRODUCTION

1. The Commission on Human Rights has been considering the situation of human rights in Guatemala since its thirty-fifth session. At that time, the Commission adopted decision 12 (XXXV) of 14 March 1979, in which it decided to send a telegram to the Government in connection with the assassination of Mr. Alberto Fuentes Mohr, ex-Minister for Foreign Affairs and Finance and a former member of the United Nations Secretariat.

2. At its thirty-seventh session in 1981, the Commission had before it a report by the Secretary-General on the situation in Guatemala (E/CN.4/1438). Subsequently, on 11 March 1981, the Commission adopted resolution 33 (XXXVII), in which it requested the Secretary-General to continue his efforts to establish direct contacts with the Government. Soon afterwards, the General Assembly had before it a further report by the Secretary-General (A/36/705); it adopted decision 36/435 of 16 December 1981, in which it requested the Secretary-General to continue his efforts and the Government to co-operate further with the Secretary-General.

3. At its thirty-eighth session, in resolution 1982/31, on 11 March 1982, the Commission decided for the first time to request its Chairman to appoint a Special Rapporteur of the Commission, whose mandate would be to make a thorough study of the human rights situation in Guatemala. The following year, the Commission reiterated the same request to its Chairman, in resolution 1983/37 of 8 March 1983. Consequently, the Chairman appointed as Special Rapporteur of the Commission Viscount Colville of Culross, United Kingdom, whose mandate was renewed annually in 1984 and 1985. In discharging his mandate, Viscount Colville of Culross submitted the following reports to the General Assembly and the Commission on Human Rights: A/38/485, E/CN.4/1984/30, A/39/635, E/CN.4/1985/19, A/40/865 and E/CN.4/1986/23.

4. The mandate of the Special Rapporteur was terminated in 1986, when the Commission, at its forty-second session, adopted resolution 1986/62 of 13 March 1986 (para. 9). At the same time, the Commission requested its Chairman to appoint a special representative to receive and evaluate the information provided by the Government on the implementation of the new legal order for the protection of human rights (paras. 8 and 7). The Commission appointed as its Special Representative Viscount Colville of Culross, who submitted a report at the next session of the Commission (E/CN.4/1987/24). Subsequently, the Commission adopted resolution 1987/53 on 11 March 1987, in which it decided to terminate the mandate of the Special Representative.

5. Also, in the same resolution 1987/53, the Commission requested the Secretary-General to appoint an expert with a view to assisting the Government through direct contacts, in taking the necessary action for the further restoration of human rights. Following this resolution, the Secretary-General appointed as Expert, on 24 June 1987, Mr. Hector Gros Espiell, of Uruguay, who submitted three reports at successive sessions of the Commission (E/CN.4/1988/42, E/CN.4/1989/39 and E/CN.4/1990/45), his mandate having been extended in Commission resolutions 1988/50 and 1989/74. Mr. Gros Espiell,

however, informed the Commission, during its forty-sixth session, that he would not be able to accept the renewal of his mandate as an Expert, due to his recent appointment as the Minister for Foreign Affairs of his country.

6. In these circumstances, the Commission on Human Rights adopted at its forty-sixth session resolution 1990/80 of 7 March 1990 in which it requested the Secretary-General:

> "... to continue to provide the Government of Guatemala with such advisory services and other forms of assistance in the field of human rights as may be necessary to foster and strengthen the consolidation of the democratic process, and promote a human rights culture" (para. 13).

7. The Commission further requested the Secretary-General:

> "... to appoint an independent expert as his representative to examine the human rights situation in Guatemala and continue assistance to the Government in the field of human rights who, within the framework of his mandate, shall prepare a report with appropriate recommendations for submission to the Commission at its forty-seventh session" (para. 14).

8. For its part, the Economic and Social Council adopted on 25 May 1990 decision 1990/244, in which it approved Commission on Human Rights resolution 1990/80.

9. In compliance with the request contained in paragraph 14 of Commission resolution 1990/80, the Secretary-General decided on 6 July 1990 to appoint Mr. Christian Tomuschat, Germany, as his representative and independent Expert to consider the situation of human rights in Guatemala and to continue assistance to the Government in the field of human rights. The decision was made public on the same day in press release HR/2597.

10. In its turn, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted on 30 August 1990 resolution 1990/11, in which it took note of the appointment by the Secretary-General of Mr. Tomuschat.

11. In the fulfilment of his mandate, the present independent Expert sought and obtained the consent of the Government for him to visit Guatemala; the visit took place from 20 September to 2 October 1990. The Expert also visited Mexico on 3 and 4 October 1990, in order to acquaint himself with the situation of the Guatemalan refugees in that country. The Expert completed his journey by holding consultations and meetings during his intermediate stops in New York and Washington. The Annex to this report shows the work programme of the Expert during his mission.

12. After taking up his mandate, the Expert consulted all the accessible and reliable sources that would enable him to acquaint himself with the situation of human rights in Guatemala. Thus, the Expert enjoyed extensive co-operation offered by the Government of Guatemala before, during and after his official visit to that country. Further, the Expert was able to consult freely a large number of persons and Guatemalan human rights, social, trade union, economic

and indigenous organizations. The sources of knowledge accessible to the Expert in drawing up the present report were supplemented by the documentation received from international, intergovernmental (especially the Organization of American States and the International Labour Organisation) and non-governmental organizations.

13. The information thus collected has enabled the Expert to gain an overall knowledge of the situation of human rights in Guatemala which he presents in this report as objectively as possible. As an obligatory point of reference, the Expert has checked the information collected against the provisions contained in the Universal Declaration of Human Rights as well as in the international human rights treaties to which Guatemala is a party, including, the International Convenant on Economic, Social and Cultural Rights (instrument acceded to on 19 May 1988); the Convention on the Prevention and Punishment of the Crime of Genocide; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention against Slavery and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the Convention and Protocol relating to the Status of Refugees; and a large number of international labour agreements including in particular Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, 1948, Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949, and Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958.

14. Guatemala is also a party to the American Convention on Human Rights (having recognized the litigious jurisdiction of the Inter-American Court of Human Rights with effect from 20 February 1987), as well as to the Inter-American Convention to Prevent and Punish Torture. In the field of international humanitarian law, Guatemala ratified the four 1949 Geneva Conventions on 14 May 1952; on 19 October 1987 it also ratified the two 1977 Protocols additional to the Geneva Conventions, signing the Headquarters Agreement for the establishment in the country of an International Committee of the Red Cross (ICRC) Office on 13 September 1989.

15. It should be remembered that, under article 46 of the Constitution of 31 May 1985 "It is established as a general principle that, in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law". This principle is repeated in article 3 of the Amparo, Habeas Corpus and Constitutionality Act of 8 January 1986. With regard to the Universal Declaration of Human Rights, Decree No. 54-86 of 1 October 1986, amended by Decree No. 32-87 of 28 May 1987, establishes in article 8 that the Procurator for Human Rights is a Commissioner of Congress for the defence of the human rights guaranteed by the Constitution, the Universal Declaration of Human Rights and the international treaties accepted and ratified by Guatemala.

16. This report refers to events that occurred between March and November 1990, although other relevant earlier and subsequent information has been included, when considered appropriate.

I. LEGAL AND POLITICAL STRUCTURE OF GUATEMALA

A. The Constitution of 1989 and its legislative and institutional developments

17. The current legal and political structure of the Republic of Guatemala is derived from the Political Constitution adopted by the Constituent National Assembly on 31 May 1985. This Constitution establishes a new legal order in the country, following a long period of de facto Governments headed by various military leaders.

18. The Constitution regulates the individual and social rights of the human person, making specific mention of the international human rights treaties that have been ratified by Guatemala, to the effect that they "... take precedence over internal law" (art. 46, quoted earlier).

19. Title VI of the Constitution also establishes the constitutional guarantees, including, in particular, the right to habeas corpus (art. 263) of any person illegally detained, imprisoned or prevented in any other manner from enjoying his individual freedom, or threatened with the loss of that freedom or suffering vexatious treatment. The person in question has the right to apply for a writ of habeas corpus from the tribunals of justice either to secure the safeguarding of his freedom or the cessation of the vexatious treatment to which he has been subjected. Further, the appropriate tribunal may execute the writ "... in the place where the prisoner is detained, without previous notice or notification" (art. 263, para. 3, in fine). This guarantee is strengthened by the liabilities that may be incurred by authorities who order the concealment of the prisoner or refuse to produce him to the respective court (art. 264).

20. Moreover, article 265 of the Constitution establishes amparo "... in order to protect persons from threats of violations of their rights or to restore their rights if they have been violated ...".

21. A further guarantee, considered in article 266 of the Constitution, is that relating to unconstitutionality of laws; in specific cases, an objection may be raised by the parties in any court, on the grounds of the total or partial unconstitutionality of a law. However, proceedings against laws, regulations or provisions of a general character flawed by unconstitutionality "... shall be initiated directly in the Constitutional Court or Tribunal" (art. 267).

22. Articles 268 to 272 establish the Constitutional Court for the defence of the constitutional order. It is a court that is permanent and collegiate (five judges and five deputies) and it is independent of the other organs of the State. The magistrates are to be appointed for five years by the Supreme Court of Justice, the Congress, the President of the Republic, the University of San Carlos and the Bar Association. The functions of the Court include hearing complaints concerning the unconstitutionality of laws or provisions of a general character; hearing applications for amparo instituted against the Congress, the Supreme Court, the President or the Vice-President of the Republic; considering on appeal applications for amparo instituted in any court of justice; hearing on appeal complaints against laws on the grounds of unconstitutionality in specific cases; advising on the constitutionality of treaties, etc., (art. 272).

23. In compliance with the provisions of article 276 of the Constitution, the Constituent National Assembly promulgated Decree No. 1-86, of 8 January 1986, concerning the Amparo, Habeas Corpus and Constitutionality Act, which develops the constitutional provisions indicated above. It should be recalled that article 3 of the Act reiterates the constitutional principle whereby "... in matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law".

24. The Amparo Act also specifies that "... there are no circumstances in which amparo is not applicable and it shall be granted whenever actions, orders, decisions, or laws of the authorities imply a threat to or restriction or violation of rights guaranteed by the Constitution and the law (art. 8 of the Act). However, before applying for amparo "... the ordinary judicial and administrative remedies ..." must have been exhausted (art. 19).

25. With regard to habeas corpus, article 82 of the 1986 Act reiterates the substance of article 263 of the Constitution (quoted above). The Act goes on to state that the period of time for producing the victim "... shall never exceed twenty-four hours from the time of the petition or complaint" (art. 89). Further, in the case of kidnapped or disappeared persons, "... the magistrate who has ordered them to be produced must himself go in search of them to the place where they are alleged to be, including detention centres, prisons or any other place indicated, suggested or suspected of harbouring them" (art. 95).

26. Articles 157 to 181 of the Constitution regulate the Legislative Branch, which is composed of a single chamber of deputies (the Congress) elected directly by the people by universal suffrage. They also regulate the prerogatives of the deputies, the organization, working and functions of the Congress and the enactment of legislation. Article 273 of the Constitution establishes a Congressional Human Rights Commission, which consist of one deputy from each political party represented in the Congress. Article 273 of the Constitution further provides that the Human Rights Commission shall propose three candidates for the election of a Procurator for Human Rights, i.e. "... a Commissioner of the Congress of the Republic for the defence of human rights guaranteed by the Constitution ..." (art. 274). The Procurator may supervise the administration, investigate any complaints of human rights violations and institute proceedings or appeals, whether judicial or administrative, etc. (art. 275). The Procurator, who is appointed for a five-year term, reports annually to the Congress through its Human Rights Commission. These constitutional provisions are supplemented by the Act on the Human Rights Commission of the Congress of the Republic and the Procurator for Human Rights, adopted by the Congress in Decree No. 54-86 of 1 October 1986, amended by Decree No. 32-87 of the Congress of 28 May 1987. At the practical level, the current Procurator has been very active in the spheres of the promotion and the protection of human rights.

27. The Constitution also regulates in articles 66 to 70 the specificity of indigenous communities as ethnic groups, including indigenous groups of Mayan ancestry. The State recognizes them and promotes their way of life, customs, traditions, form of society, languages, etc.; land belonging to indigenous co-operatives and communities shall also enjoy the special protection of the State (art. 67). A specific law will be required to regulate these matters, in conformity with the provisions of article 70 of the Constitution.

Accordingly, an Indigenous Communities Commission has been set up within the Congress to promote the adoption of specific legislation of concern to the indigenous communities.

28. The Constitution provides for the regulation of the Judicial Branch in articles 203 to 222. These provisions state that the administration of justice and the enforcement of judgements are the duty of the courts of law, organized under the authority of the Judicial Branch. All the other State organs are required to provide the courts with the assistance they require. The Judicial Branch is invested with the safeguards of functional and economic independence, as well as with the principle whereby magistrates and judges of first instance may not be removed (art. 205). Article 209 prescribes that judges, secretaries and subordinate staff shall be appointed by the Supreme Court of Justice and also announces that a law will regulate the judicial service, to which entry and promotion to higher ranks shall be by examination. The Judicial Branch will also have autonomy in administering its own budget, whose amount will not be less than 2 per cent of the State Budget of Ordinary Revenues (art. 213).

29. With respect to the Supreme Court of Justice, its President is also President of the Judicial Branch and the Court consists of nine magistrates elected by the Congress for a term of six years. Of the nine magistrates, four are elected directly by the Congress while the remaining five are also elected by the Congress, but selected from a roll of 30 candidates proposed by a candidates' commission. The candidates' commission consist of the deans of the faculties of law of Guatemala, an equal number of representatives of the Bar Association and a representative of the Judicial Branch. The President of the Supreme Court is elected by its magistrates.

30. The machinery for amending the 1985 Constitution is provided in articles 277 to 281 of that instrument. The procedure may be initiated by the President of the Republic, the Constitutional Court, 10 or more deputies or not less than 5,000 citizens duly enrolled in the register of citizens. An initiative of that kind must be accepted by an affirmative vote of two thirds of the members of the Congress, which will convene a constituent national assembly. Article 281 of the Constitution prohibits amendments being made to articles 140 and 141 (the basic principles of the Sovereign State), 165 subparagraph (g) (the function of the Congress to withdraw recognition from the President of the Republic if he continues in office on the expiry of his constitutional term, in which case the Army shall come automatically under the authority of the Congress), 186 and 187 (the disqualification from the Presidency or Vice-Presidency of the Republic of the leader or chiefs of a coup d'état disturbing the constitutional order or assuming the position of head of Government as the result of such actions, or of relatives to the fourth degree of consanguinity and the second degree of affinity; ban on the re-election or extension of the presidential term of office of a person who has already served as President).

31. Attention should be drawn to article 21 of the transitory and final provisions of the Constitution; it specifies the entry into force of that instrument on 14 January 1986. The Constitution thus retains its validity "... despite any temporary interruption as a result of force majeure" (art. 21).

32. In the electoral sphere, Decree No. 1-85 of the Constituent National Assembly of 3 December 1985 (entering into force on 14 January 1986) established the Electoral and Political Parties Act, subsequently amended by Decrees Nos. 51-87 and 74-87 of the Congress. The Act regulates questions relating to citizens and the vote, political organizations, including political parties, civic electoral committees and associations with political objectives, the Supreme Electoral Court, the electoral bodies, the register of citizens and the electoral process. The Supreme Electoral Court is the highest authority on electoral matters; it is independent and is not subordinate to any other organ of the State (art. 121). It consists of five magistrates and five deputies, elected by the Congress with an affirmative vote by two thirds of its members, from a roll of 30 candidates proposed by a candidates' commission. They remain in office for six years and their resolutions and orders may give rise to remedies requiring them to elaborate or to explain (art. 133). Their decisions may also give rise to an extraordinary remedy of amparo in the cases specified by the Amparo Act (art. 134 of the Electoral and Political Parties Act).

33. The Electoral and Political Parties Act is supplemented by the Regulations concerning the Electoral Law approved by Order No. 181-87 of 7 December 1987 of the Supreme Electoral Court. These regulations organize the stages of the electoral process, the preparations for the voting, the holding of elections and the announcement of the results.

34. The electoral legislation described earlier was put into effect by Decree No. 1-90 of 8 June 1990 issued by the Supreme Electoral Court, which gave notice of elections for the post of President and Vice-President of the Republic, deputies to the Congress and the Central American Parliament, and members of the municipal corporations of Guatemala, with the exception of those members elected for five years in 1988. The general elections were held on 11 November 1990 and Jorge Carpio Nicolle of the Union del Centro Nacional (Union of the National Centre-UCN) and Jorge Antonio Serrano Elías of the Movimiento de Acción Solidaria (Movement for Joint Action-MAS) were the presidential candidates who received most votes. However, since neither of them won an absolute majority of votes (one half plus one of the valid votes), it will be necessary to have a second round on 6 January 1991 to decide which of the two candidates will become the President of the Republic.

35. Three phenomena that occurred during the first round of the general elections should be borne in mind. The first was the rejection of retired General José Efraín Ríos Montt's candidacy for the post of President by the highest legal authorities in the country (the Supreme Court of Justice and the Constitutional Court), in implementation of article 186 of the Constitution. The second was the high abstention rate in the voting in the elections of 11 November 1990, which stood at 43.6 per cent of all registered voters (3,204,955 persons); if the citizens of voting age but who are not registered voters (some 1,137,000 persons) were added to this, the real abstention rate would be 65 per cent of the population. The third phenomenon that marked the first round of elections was the violence surrounding the electoral campaign during which a large number of political leaders were murdered (see below, section V.2 extrajudicial executions).

36. In addition to the legal and institutional structure which has been described, there are three other institutions which do not derive from the Constitution but play an important role in human rights matters, namely, the National Reconciliation Commission, the Ad Hoc Committee for Aid to Returnees (CEAR) and the Advisory Commission on Human Rights matters to the Office of the President of the Republic.

37. The Ad Hoc Committee for Aid to Returnees (CEAR) was established by Government Order No. 765-86 of 16 October 1986 and is charged with establishing conditions which permit the gradual return of refugees or persons displaced by the armed conflict. The Committee is run by a Board of Directors, composed of representatives of various Ministries, including the Ministry of Defence and it is chaired by the representative of the Ministry of Foreign Affairs.

38. The Advisory Commission on Human Rights matters to the Office of the President of the Republic was established by Government Order No. 244-88 of 19 April 1988; it is composed exclusively of government officials. The Commission has promoted activities to make for improved co-ordination between the Executive and Judicial Branches, particularly in respect of disappeared persons. It is also involved in promoting human rights and international humanitarian law by means of courses and programmes that are also supported by the Ministry of Education. As will be seen, the Commission's contribution towards clarifying cases of enforced disappearances has diminished (see below, section V.1.: Complaints of abductions and disappearances. Availability of the remedy of habeas corpus).

B. The role of the army

39. The Constitution of Guatemala contains a chapter on the Armed Forces (arts. 244-250). Article 244 (1) reads:

> "The Guatemalan Army is an institution intended to maintain the independence, sovereignty and honour of Guatemala, the integrity of its territory, peace and security, both internal and external."

40. Additionally, article 244 (2) establishes the professional and apolitical character of the army. This provision is complemented by a ban on the formation of armed groups not regulated by the laws (art. 245), the subordination of the armed forces to the Commander-in-Chief of the Army, who is the President of the Republic (art. 246) and of a ban on members of the Guatemalan Army on active service voting or exercising the right of petition in political matters or in a collective manner (art. 248).

41. It emerges clearly from article 244 (1) that the Constitution entrusts the armed forces not only with defending Guatemala against attacks from outside the country, but also with guaranteeing its internal security. No conditions have been formulated to check and restrain the use of the army in internal conflicts. In particular, the Constitution does not involve the Congress in important decisions concerning the use of the armed forces in such conflicts. However, if the President declares a state of emergency under article 138 of the Constitution, the Congress will be automatically convened with a view to pronouncing itself on the corresponding presidential decree (art. 138 (4)).

42. According to article 246 (1) of the Constitution, the President of the Republic is the Commander-in-Chief of the Armed Forces. However, the provision explicitly specifies that he "shall convey his orders through the general officer or colonel or his equivalent in the navy occupying the post of Minister of National Defence". In other words, the Constitution provides that the Minister of Defence must be a high-ranking member of the armed forces. Hence, it would even run counter to the law in force to appoint a civilian as Minister of Defence.

43. The legal position of the armed forces under the Constitution, as determined by articles 244 and 246, seems to have contributed to creating a certain margin of autonomy for them. Time and again, the Expert has encountered formulations in official texts which, by speaking of "the Government and the Armed Forces", place these two institutions on a level of parity. For the outside observer, the clear implication is that the armed forces constitute an independent power centre which is not simply subordinated to the civilian Government.

44. Faced with deeply rooted internal disturbances, which rise to the level of armed conflict, an army will almost necessarily be compelled to view itself as the main guarantor of national unity and integrity, over and above the confrontations between the political parties and factions. In a democratic society, however, the armed forces cannot play an independent role. Their function is determined by the Constitution, which places overall responsibility for the destiny of the nation in the hands of the civilian Government and the directly elected Parliament. These can be made accountable for their actions, in particular through the electoral process. An institution which has not received a direct mandate from the people cannot enjoy an autonomous power of decision. Only if, and to the extent that, it is controlled by the Government does it fit within the structural framework of a democratic system. No country can escape from this fairly simple logic. Eventually also, an army that fully recognizes its subordination to the civilian Government gains a new and unchallengeable authority as a part of the State machinery which, mandated by the people, operates exclusively for the benefit of the people.

45. In many sections of the present report, allegations are mentioned which attribute to certain elements of the armed forces or of the police responsibility for disappearances, acts of torture and political killings. In many cases studied by the Expert, only circumstantial evidence is available to that effect, leaving apart the recent mass killing in Santiago Atitlán for which, clearly, military authorities must bear responsibility.

46. On 1 December 1990, at 9 p.m., an unknown number of soldiers tried to drag Andrés Sapalú Ajuchan from his house in Santiago Atitlán; he resisted and shouted for help. His neighbours came out of their houses and the soldiers then withdrew, firing at one person who received two bullet wounds. Thereupon, the neighbours rang the church bells and the population congregated in the square and led by the mayor and the mayor-elect they went to the military post in a peaceful way, carrying white flags, with the intention of talking to the army commanders. However, they were met with bullets; 11 persons died on the spot and 19 others were wounded. The wounded were

taken to the Sololá National Hospital and two of them died shortly after. On the following day, the Procurator for Human Rights visited the scene of the events and began an inquiry which led to a clarification of what had occurred. The Procurator concluded that the whole village had organized itself peacefully and had also demonstrated peaceably before the military post, carrying white flags in the middle of a night on which there was a full moon, which made for good visibility. The Procurator concluded that the mass killing, which took place at short range, was completely unjustified because no violent act had been committed against the soldiers. Consequently, both the Procurator and the Expert agreed on what they had already observed during their visit together to Santiago Atitlán on 2 October 1990, that this deplorable act of aggression against the unarmed civilian population was the culmination of many other acts which had been denounced in the past, for which the army had been held responsible, such as intimidation, abuse of authority, repression, population control, extrajudicial executions and enforced disappearances. Thus last October the Expert observed an atmosphere of fear and distrust among the inhabitants of Santiago when he attempted to speak with them about the human rights situation there.

47. Finally, the Procurator for Human Rights stated in his report of 7 December 1990 that the army as an institution was responsible for violations of the right to life and physical integrity of the stricken inhabitants of Santiago Atitlán. The Procurator also identified Lieutenant José Antonio Ortiz Rodríguez as responsible in his capacity as commander of the military detachment and Second Lieutenants Juan Manuel Herrera Chacón and Sergio Julio Maaz Ochoa. The Procurator also ordered that those responsible should be brought before the courts, and recommended that the army should be publicly censured for those acts. Lastly, he recommended that the army should change its behaviour and he requested the high command to withdraw the military detachment from Santiago Atitlán and that the inquiry should be left open, in order to establish the identity of the perpetrators of such reprehensible acts.

48. The officials of the armed forces and of the police with whom the Expert had the opportunity to converse during his stay in Guatemala all assured him that the leadership in command did its very best to prevent and combat any unlawful actions. None the less, the charges brought by victims or their relatives against the armed forces and the police cannot be discarded as simple attempts at defamation. Even if the high-level command structure is not aware of actual crimes in specific cases, it must be fully informed about the gloomy overall picture of insecurity in the country. Almost everyone in Guatemala who takes part in the social and political life of the nation lives in a state of fear of becoming a victim of a murderous attack. Under these conditions, it would be the primary duty of the top ranks of the armed forces and of the police to adopt a cluster of strict measures suitable to prevent all abuses. In particular, there appears to be a clear need to clean the armed forces of all paramilitary units which may be operating under the protection or with the connivance of local commanders of lower rank. The Expert considers it inconceivable that the armed forces should not be able to gather the necessary intelligence to identify those paramilitary groups and to put an end to their criminal activities.

49. The credibility of the new Government as a guarantor of human rights and social justice will be assessed in particular by its performance in combating not only common crime, but, in particular, politically motivated disappearances and murders. To this end, the new Government will have to establish its firm authority over the armed forces, making it clear that they are nothing else than an instrument whose task it is to serve the people of Guatemala. There should be no doubt that the armed forces must be permeated by the same spirit which has found its reflection in the Constitution of Guatemala, whose introductory articles proclaim the supreme values of the national community. According to article 3, "The State guarantees and protects human life from the time of conception, as well as the integrity and security of the person". This solemn pledge has gone largely unheeded in Guatemala for several decades. The new Government must engage its best efforts to make the basic tenets of the Constitution a living reality.

C. The regional peace and national reconciliation processes

50. One of the most comforting features of the current development of Guatemalan society during 1990 has been the process of national reconciliation. The Esquipulas II Accord of 1987, concluded between the Presidents of the five Central American Republics, laid down the bases of that process. It provides for the establishment, in all five States Parties, of national commissions of reconciliation whose mandate should be to initiate a broad dialogue between all sectors of society, in particular between Government and opposition. At the same time, it underlines the need to lift any state of emergency or siege and promote democratic, pluralistic and participative processes. In Guatemala, implementing the Esquipulas II Accord, President Cerezo established the National Commission on Reconciliation, of which Bishop Rodolfo Quezada Toruño was appointed Chairman. It proclaimed as its main objective to initiate and carry on a dialogue on all major issues of national importance as an alternative to physical violence as a means to settle conflicts, and thereby to build basic democratic structures. The Commission started dealing with its tasks in 15 specialized committees (working committees). A general assembly was held on 1 and 2 December 1989, which approved a final document, concluding the first stage of the national dialogue, which sets out the main results reached during that period of studies and reflection.

51. A further step in the process of seeking peaceful solutions to Guatemala's vital problems was reached when representatives of the National Reconciliation Commission and representatives of the National Revolutionary United Front (URNG), the organization which combines all rebel movements, met from 26 to 30 March 1990 in Oslo and succeeded in concluding a "Basic Agreement on the Search for Peace by Political Means" (Acuerdo Básico para la Búsqueda de la Paz por Medios Políticos). Pursuant to this agreement, a number of further meetings were to be held between the URNG and the relevant sectors of Guatemalan society. It was also stated that eventually, as a last step, direct conversations should be conducted between the Government and the armed forces, on the one hand, and the URNG on the other. The agreement specifically mentioned the fact that the representatives of the National Reconciliation Commission acted "with the full support of the Government of the Republic of Guatemala" (con pleno respaldo del Gobierno de la República de Guatemala).

52. The first of these planned meetings was convened in Spain (El Escorial, Madrid) from 27 May to 1 June 1990 between the representatives of all major political parties and the URNG. Again, a common platform The El Escorial Agreement (Acuerdo de El Escorial) could be established. In particular, the two sides agreed on the following objectives:

> "2. That, in order to achieve peace and the enhancement of the democratic system, it is necessary to promote the participation of all forces and political and social sectors in the definition of the whole body of institutional changes that will make it possible to achieve the full operation of the civic and political rights of organization and expression; independent economic development, general well-being, social justice and unrestricted respect for the independence of the powers of the State, in order to secure and guarantee the application of justice, respect for the integrity of the individual, honesty and probity in public administration and the defence and safeguarding of national sovereignty.
>
> "3. The need is recognized to promote a process of revision and institutional reform that includes the legal order of the country, with the commitment to promote reform of the Political Constitution of the Republic by the mechanisms established therein and with the aim of achieving the goals of peace and the enhancement of functional and participative democracy, by efforts towards:
>
> (a) The reconciliation of all Guatemalans;
>
> (b) The ending of the internal armed confrontation and the peaceful solution of national problems by political means;
>
> (c) Unrestricted respect for and application of the law."

53. The second meeting took place from 31 August to 1 September 1990 in Ottawa (Canada). It brought together a delegation of the business community of Guatemala, represented by the Chamber of Agricultural, Commercial, Industrial and Financial Associations (CACIF), and a delegation of the URNG. This time, no consensus emerged on a common declaration. However, in separate communiqués, the two sides stressed that the talks had taken place in an atmosphere characterized by a clear will to promote and strengthen mutual understanding.

54. The third meeting was held in Quito (Ecuador) from 24 to 26 September 1990 between the religious sector and the URNG. It assembled representatives from all major religious groups, including the Catholic Church, the Protestant churches as well as the Jewish community. The Declaration of Quito, issued at the close of the meeting, expresses firm support for the El Escorial Agreement. In one of its key sections, the Declaration states:

> "There can be no genuine and real peace without absolute respect for human rights."

55. A fourth meeting, from 23 to 25 October 1990 in Metepec (Mexico), was attended by the trade unions and people's organizations at the grass-roots level (sector sindical y popular). In the Declaration of Metepec, the two sides expressed, inter alia, the following views:

> "We believe unconditional respect for human rights and fundamental freedoms to be imperative. We are convinced that, basically, the general crisis currently afflicting the country will have to be overcome through the active participation of all sectors and in fulfilment of the requirements of social justice and freedom."

56. A last meeting was held on 27 and 28 October 1990 in Atlixco (Mexico) between "the academic, co-operative and business sectors, the citizens and professionals of Guatemala" and the URNG. Again, the common will was expressed to address the economic, political and social problems which affect the lives of the majority of Guatemalans.

57. In accordance with the stipulations of the Oslo Agreement, the representative of the Secretary-General of the United Nations, Mr. Francesco Vendrell, was present at all of these meetings as an observer to discharge the function assigned to the Secretary-General "to monitor the activities to be carried out and to act as the guarantor of the fulfilment of the commitments" made under the terms of the Oslo Agreement.

58. Until now, no official encounter has taken place between the Government and the armed forces of Guatemala, on one hand, and the URNG, on the other. In public declarations, the Minister of Defence has made clear that the armed forces are not prepared to establish a dialogue with a rebel force. In his view, the URNG must stop all armed activities before any conversations could be deemed acceptable. In the same context, proposals to hold a bridging meeting (reunión puente) between the outgoing President, together with the two leading candidates in the presidential race who will contest the second round of the elections on 6 January 1991, and the URNG, have failed to materialize. However, one of these two candidates, Dr. Jorge Serrano, has already made known his intention to continue the national dialogue in case he should be entrusted by the people of Guatemala with the presidential mandate for the next five years. In addition, many calls have been made by social groups requesting that the Government and, in particular, the armed forces should give up their reluctance to getting involved in direct talks with the URNG. One such appeal was launched by the trade unions and people's organizations at the grass-roots level (sector sindical y popular) in the Declaration of Metepec. On 1 November 1990, the Catholic Church of Guatemala, speaking through the voice of Archbishop Próspero Penados del Barrio, specifically asked the armed forces to accept direct contacts with the URNG, overcoming the negative attitude which they had manifested beforehand.

59. The Expert fully agrees with the basic tenets of the process of national reconciliation. The many problems which Guatemala has to tackle at the present time and in the future cannot be resolved by force. At the basis of many, if not most, of these problems is an open inability or unwillingness to establish a dialogue. However, in a democratic society, which acknowledges the quality of all of its citizens, no one political group can simply impose

its views on all the others. Under democratic rules a majority must act with restraint, carefully taking into account the rights and interests of dissident groups. Conflicts of interest can never be avoided. Whoever claims that national unity constitutes a panacea to find a harmonious solution for any contentious issue just distorts realities. Through a frank and open dialogue, all ways and means should be explored to reach a broad consensus. Dialogue constitutes the only method which permits the greatest number to be satisfied and to have to make the least possible sacrifices. Furthermore, dialogue is the only method which corresponds to the dignity of man as a free person in a free society, where the law requires legitimation through democratic processes in order to become the source of rights and obligations for every citizen.

II. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. The economic and social situation

60. According to official data provided by the National Planning Secretariat (SEGEPLAN) compiled by the Association for the Advancement of the Social Sciences in Guatemala (AVANCSO), 85 per cent of the population was living in poverty in 1985. Of this 85 per cent, 54.5 per cent lived in extreme poverty meaning that they were unable to satisfy their minimum daily food requirement. The remaining 32 per cent were able to satisfy their minimum food needs but not other basic health, housing and education needs. In 1990, initial estimates indicate that 9 out of every 10 Guatemalan families were living in poverty, earning just enough to feed themselves but not to meet other basic needs such as housing, medicines or schooling for their children. One in every three Guatemalans is living in extreme poverty, in other words is unable to feed himself (AVANCSO, La política de desarrollo del Estado guatemalteco 1986-1987, Guatemala 1990, pp. 13 et seq.). This information has been confirmed by the statistics of the Economic Commission for Latin America and the Caribbean (ECLAC), according to which 68 per cent of the households were living below the poverty line in 1986. Furthermore, according to recent statements by the Minister of Economic Affairs, Guatemalans were poorer in 1990 than in 1985.

61. Such a situation of poverty is due, inter alia, to growing unemployment, which certain estimates claim to affect half of the economically active population (EAP). Official figures from the National Statistics Institute revealed in 1988 that there was 6.1 per cent overt unemployment and 26.6 per cent underemployment, visible or invisible, and that the inflation rate had increased considerably in recent months. AVANCSO has also calculated that "the economically active population is growing at an annual rate of 2.8 per cent which means that every year over 70,000 persons will enter the job market for the first time" and that the country's economy cannot absorb them all (ibid., p. 15). It is estimated that if this situation continues, overt unemployment will be over 18 per cent in 1991, affecting more than 950,000 persons, while underemployment could reach around 32 per cent, affecting 1.5 million people.

62. Another determining factor for the country's development is the external debt which is estimated by the Bank of Guatemala at Q2,732.5 million. Thus, the State Budget of Revenue and Expenditure for 1991, which has just been

approved by the Congress is Q5,515 million. Out of this budget, some Q832.3 million will be earmarked to meet obligations arising from the external debt in 1991 (Q317.8 million for interest and the remainder for capital amortization). Besides, allocations of the budget approved for 1991 show that the financial sector heads expenditures with Q1,989 million, followed by education, science and culture (Q751 million), defence (Q552 million), health and social welfare (Q520 million), transport (Q445 million) and labour and social security (Q320 million). Agriculture will receive Q225 million.

63. In respect of wages, in 1990 minimum wages were set in the following manner: in agriculture, Q10 a day; in trade, Q15; in industry, Q17; and for government workers, Q12 a day. Notwithstanding this recent increase, it is feared that the high inflation will not enable the workers' real purchasing power to increase substantially. There have also been massive complaints to the effect that in the rural areas, in particular, the new rules have either not been respected or that their effect has been cancelled out through a concomitant increase in the performance standards with which workers are required to comply.

64. As a result of the high poverty rates, it is common to find undernourished people in Guatemala. According to AVANCSO estimates, 73 per cent of the children under five years old suffer from some degree of malnutrition. This figure is the national average but may be higher in the areas affected by political violence or drought. In the final analysis, 71 per cent of the families in the country are unable to satisfy the energy requirements for survival, and the ensuing malnutrition and undernourishment are decisive factors in the high mortality rates, especially among children. Diseases such as tuberculosis, parasitic disorders and digestive infections are very common among the population. The Fiscal and Budgetary Policy Commission of the National Reconciliation Commission has calculated that Guatemala has an overall mortality rate double that of the other Central American countries because its infant mortality rate is four times higher than that of these countries. The National Statistics Institute states that the main causes of death in 1987 were respiratory disorders (14.5 per cent) and intestinal infections (14.3 per cent), as well as malnutrition (4.5 per cent). The main causes of morbidity in 1987 were respiratory insufficency (15.7 per cent), intestinal parasitic disorder (7.9 per cent) and malnutrition (7.6 per cent). The Institute recognized that in 1988 there was a 46.6 per cent infant mortality rate among children under 15 years of age.

65. Medical, pharmaceutical and hospital care are also completely inadequate. According to figures compiled by the Expert, the number of available beds in hospital facilities has decreased, at the rate of one bed per 1,000 inhabitants. Recently, three national hospitals located in Guatemala City discontinued their services to the public because of lack of resources. It has been reported, that these hospitals had contracted a debt of Q23 million with their usual suppliers of food, medicines and fuel which was reportedly not covered by the relevant budget item. Furthermore, the State health services have given priority to hospital care concentrated in urban areas, at the expense of rural areas. Thus, 45 per cent of the doctors live in the capital, and 68 per cent of the health staff works in hospitals, 25 per cent in health centres and only 7 per cent in clinics serving the smaller communities.

66. The security and social welfare coverage in Guatemala is not enough to cover the growing needs of the abandoned children, the mentally ill, the destitute, nursing mothers, the elderly and the handicapped. It is calculated that 46 per cent of the population has no form of social security coverage, and traditional social security systems or charitable organizations cannot entirely replace action by the State.

67. There is also an acute housing shortage. According to official figures there was an accumulated shortfall of 763,000 units in 1987, with an increase of 56,500 dwelling units per year calculated for the period 1988-1991. Some persons estimate that only 4,002 new units were constructed in 1990 and they add that the cost per square metre of a modest house is now three times that of the cost in 1980, and is currently calculated at Q124 per square metre. Figures supplied by the Fiscal and Budgetary Policy Commission of the National Reconciliation Commission indicate that, according to the housing census conducted in 1981, 51 per cent of the houses built had an earth floor, 31 per cent adobe walls; 55 per cent had no running water and 72 per cent had no drainage. With respect to the housing situation in the capital, it is calculated that 33 per cent of the population (about 352,000 people) lives in makeshift or poor shanty towns, whose inhabitants lack proper housing as such as well as the minimum municipal services. Furthermore, according to a survey carried out in 1986/1987 by the National Statistics Institute, houses with one room had, on average, five inhabitants. The worst overcrowding occurs in houses with two or three rooms, where over 60 per cent of the population is concentrated.

68. The figures on education in Guatemala are also disturbing: the 1988/1989 socio-demographic national survey showed an average illiteracy rate of 40.2 per cent, but among women in the rural areas this rate was as high as 59.3 per cent in 1989. Various data explain the reasons for this situation: on the one hand, the lack of schools which severely curtails enrolment. The percentage of children not enrolled in school, according to the National Statistics Institute in 1987, was 73.3 per cent at the pre-primary level (5 to 6 years), 38 per cent at the primary level (7 to 12 years) and 79.0 per cent at the secondary level (13 to 18 years). Other figures also provided by the Government show an illiteracy rate of 46.0 per cent in 1989 and the rate of non-enrolment at the secondary level of 85.3 per cent. Moreover, there is also a shortage of primary school teachers, since in 1987, there were 53,461 teachers in both State-run and private establishments, whereas some 124,890 teachers were needed. The Fiscal and Budgetary Policy Commission of the National Reconciliation Council estimates that by the year 2000 the school-age population not catered for will be 2,875,521, in both the private and public sectors, and that, consequently, the number of government teachers' posts should be increased by 82,630.

69. In 1984, the Government set up the National Bilingual Education Programme (Government Order No. 1093 of 20 December 1984) to provide bilingual education, from the pre-primary to the fourth grade, for some 260,000 indigenous children in the four major indigenous languages (Quické, Cackchiquel, Mam and Kekchi), although that figure represented only 20 per cent of indigenous children of school age. Other estimates set the 1990 enrolment deficit in the school system at 422,000 at the pre-primary level (5 to 6 years); 748,000 at the primary (7 to 14 years); and 962,000 at the secondary level (13 to 20 years). In all, the deficit would affect 59 per cent of the population of these age groups.

70. The Expert has also received information from various sources to the effect that in areas where there is conflict, the army sometimes occupies school premises for its own needs, at the expense of ordinary school activities. In the city of Chimaltenango, it was observed that the premises of the Pedro Molina National Rural School, which was set up to train teachers, were partly occupied by the armed forces, despite repeated complaints by teachers and teachers' associations to the authorities and even to the President of the Republic.

71. With respect to trade union rights, the Expert has closely followed case No. 1512 arising out of a complaint presented by the International Confederation of Free Trade Unions (ICFTU) against the Government of Guatemala to the Committee on Freedom of Association of the Governing Body of the International Labour Organisation. The Confederation complained that trade unionists had suffered death threats, enforced disappearance, torture and violent death, which constituted a serious obstacle to the exercise of trade union rights. Consequently, the Committee recommended that the Government should investigate the torture allegedly suffered by Professor Maritza Hurtarte de Ruiz, and resulting in a fractured spine caused by the beatings she received in prison. In a similar instance, some 40 teachers on strike had been injured by the security forces on 3 July 1989. It was also reported that a labour inspector had not been allowed to enter an enterprise to inform the employer of the immunity of the trade union officers (272nd report of the Committee, document GB.246/7/10, of May-June 1990, para. 561).

72. The Committee on Freedom of Association also said that it regretted the occurrence of the labour dispute involving the teaching sector in 1989 which had lasted for 180 days and resulted in acts of violence, arrests and violent deaths. In particular, the Committee requested the Government to provide information on the death of strike leader Carlos Humberto Rivera, on 9 September 1989; his body was found together with those of three other student leaders. All three showed signs of torture. The Committee also urged the Government to carry out the appropriate judicial inquiries into the murder of José Orlando Pantaleón, a member of the Workers' Union of the Central Bottling Company Ltd. (STECA) on 27 September 1989; and the deaths of peasants in Alta Verapaz in August 1989 in San Marcos, el Progreso and Quetzaltenango in September 1989. The Committee also referred to the death threats that had been received by some trade unionists who chose to go into exile, as well as the difficulties encountered by the workers' union in the Port of Quetzal in obtaining legal personality (275th report of the Committee, document GB.248/7/11 of November 1990, para. 400).

73. For its part, the ILO Committee of Experts on the Application of Conventions and Recommendations indicated in its latest report, in respect of the Convention concerning the Abolition of Forced Labour (No. 105 of 1957) which was ratified by Guatemala, that certain legal provisions did not appear to be in line with the Convention. Specifically, the Commission referred "... to the provisions of Legislative Decree No. 9 of 10 April 1963 and sections 390, subsections 2, 396, 419 and 430 of the Penal Code, under which sentences of imprisonment involving, by virtue of section 47 of the Penal Code, the obligation to work, can be imposed as a punishment for expressing certain political opinions, as a measure of labour discipline or for participation in strikes" (International Labour Conference, seventy-seventh session, 1990, report III - Part 4A, p. 302).

74. The Expert has also been informed that other trade union leaders met with violent deaths. The case of Francisco Chocoj López, the manager of an agricultural co-operative in Tecpán (Chimaltenango) was cited. He was murdered on 25 January 1990, apparently by paramilitary gangs. In Guatemala City, trade unionists Carlos Enrique and Tyron Sagastume y Sagastume of the Coca-Cola company were murdered in a similar manner on 10 February 1990; their bodies showed marks of torture and bullet wounds. The trade unionists Diego Velasquez, Juan Tara and Esteban Salamica were abducted on 31 March and 5 April 1990 in different actions; it is therefore assumed that they were abducted by paramilitary gangs and their bodies were found some days afterwards showing signs of torture. Lastly, Petronilo Hernández, a trade union leader in the department of Jutiapa, was murdered in front of his house by unidentified armed men on 1 July 1990.

75. As far as the employment of minors is concerned, it should be recalled that the Constitution prohibits the employment of persons under 14; this provision appears to be respected in the industrial sector. However, the same cannot be said of the informal sector. In the rural sector it is common to see family members working the land together regardless of age. Furthermore, many workers on the high plateau, who are forced to emigrate to the lowlands in search of seasonal employment, are compelled to take their families along with them with the result that the children not only interrupt their schooling but often share in the work of the adults.

B. The situation in the rural areas

76. Rural life in Guatemala is strongly conditioned by the unequal distribution of land between the minifundios and the latifundios. According to the 1979 census, the minifundios (very small farms or smallholdings) constituted 88 per cent of the farms in the country but accounted for only 16 per cent of the arable land. These minifundios are too small to keep a peasant family fully employed throughout the year. Their land is the least fertile in the country, and is usually unable to produce even enough for their owners to survive. With this in mind, a study by the United States Agency for International Development (AID) established that the land concentration ratio in Guatemala in 1979 was 85.05 per cent, according to the Gini Coefficient, which takes two variables into account: the size of the farm and the extent of the land. The departments which were higher than the national average were Escuintla, Santa Rosa, Quetzaltenango, Suchitepéquez, Retalhuleu and Zacapa (see R. Hough et al., Tierras y trabajo en Guatemala. Una evaluación. AID/Washington, 1982, p. 2). The study also showed clearly that 83 per cent of the rural population did not have an income sufficient to cover its basic needs (some 2 million peasants); of this number, 41 per cent was not able to satisfy their minimum daily food requirement (1.8 million people were living in extreme poverty). In contrast, the latifundios (multi-family, medium-size and large farms) monopolize huge tracts of the best quality land and it was calculated that in 1989 they accounted for 2.5 per cent of the country's farms and 65 per cent of the arable land (ibid., p. 76). Furthermore, the minifundios and the latifundios were mutually complementary, because the peasants from the minifundios formed a source of cheap labour, and temporarily emigrate from the high plateau to harvest the agro-export products grown in the latifundios. This activity provides the poorest campesinos with up to three quarters of their total annual income. In the early 1980s, it was estimated that there were more than 300,000 of these migratory workers.

77. The structure of land ownership which has been described does not appear to have changed in recent years, although the situation of the small farmers may have become more precarious since their number has increased and the size of their holdings has decreased through subdivision or sale. Consequently, there is a large number of economically active agricultural workers who have no land. The above-mentioned AID study states that in 1980 there were 419,620 workers (ibid., pp. 9 and 81). This situation has deteriorated most in the high plateau region where the minifundios are concentrated, because this region has been particularly prone to political violence that has led to the destruction or abandonment of hundreds of communities, and produced 1 million internally displaced persons and some 57,000 refugees who are still living in Mexico (see below, section III.B: Large-scale departures of the rural population).

78. The Guatemalan Episcopal Conference raised these problems in its Pastoral Letter of 29 February 1988, entitled "The clamour for the land". According to the bishops, the peasants have difficulty in obtaining title deeds for lands that they have worked for a long period of time. In the absence of adequate protective legislation, their lands often end up in the hands of landholders who are better equipped economically and legally to obtain the legal title deeds. The bishops point out that the peasants who succeed in becoming land-owners practise subsistence farming on very small holdings, growing maize and beans. As for those who own no land, they join the ranks of "cruelly exploited labourers" who do not in many cases receive even the legally stipulated minimum wage. Even the "mozo colono", a pre-capitalist, outdated and paternalistic concept, which gave a measure of stability and some sort of right to work on a particular farm and even to cultivate certain plots of land for profit, represents a type, which the masters prefer to replace by gangs of migrant workers, who stay on the farm only at harvest time.

79. In recent years, the Government has promoted the granting of title deeds. It is calculated that over the last 30 years, 664,525 hectares of land have been distributed under the system of agrarian development zones and land allocation and settlement. Under this scheme, 50,267 families received titles, although they were not all peasants, since many farms in the el Petén and la Franja Transversal del Norte area were divided up, according to the study drafted by AID and mentioned by AVANCSO, "between the military and the bureaucrats" of the previous Governments (AVANCSO, la politica de desarrollo ... cit., pp. 107 to the end).

80. The private farming sector is also in favour of changing the land ownership system, provided that it continues to create more small and medium-sized holdings and to replace the large landed estates by agricultural enterprises which will invest in export products. The private sector also holds the view that only idle land, whether State-owned or privately owned, should be brought under the agrarian reform programme. It stresses further that agricultural reform should not be an end in itself, but a means to promote the economic development of the country and should include environment improvement, education, housing, communication and other programmes.

81. Guatemala has a population of over 9 million inhabitants, 80 per cent of whom live in the rural areas. According to different sources consulted by the previous Expert, the indigenous population varies between 41 per cent and 65 per cent of the total population (E/CN.4/1990/45, para. 32). That

indigenous population is made up of various ethnic groups. The so-called "ladinos" are an ethnic group that emerged from intermarriage between the Spanish conquerors and the original population of the country. The largest indigenous community is the Mayan population, which again, is divided into different language groups. The Garifuna are mentioned as the second indigenous community, whereas the Xinca almost seem to have disappeared. Within the framework of the National Commission of Reconciliation, the Commission on Ethnic Groups (Comisión de Grupos Etnicos) has attempted, in its final report of June 1990, to establish an overall balance sheet of the situation of the indigenous communities in Guatemala. Serious charges are brought by this report against the ruling political élites of the country. Essentially, it is contended that the citizen of indigenous origin is still not regarded as a person enjoying the same rights as other citizens, his culture, language and tradition being considered inferior to those of the dominating classes with their Hispanic roots. In the social and political life of the nation, this contempt, according to the report referred to, is reflected in massive discrimination against the members of the indigenous communities. No adequate language training is given to children, who normally are taught in Spanish, which is a foreign language to them. A comprehensive educational programme for the indigenous populations has not been adopted until now. Even today, the land rights of indigenous communities are not fully and unreservedly acknowledged so that they may lose their ancestral lands to which their culture and identity are tied. In addition, the indigenous population in the rural areas have been and still are the main victims of the civil war in Guatemala. Even today, great numbers of the males are compelled, contrary to article 34 of the Constitution, to join the so-called civilian self-defence patrols. Likewise, they are the primary target of arbitrary draft practices. In one passage, the Commission's report even goes so far as to speak of "genocide and ethnocide" (p. 8). The Expert's view is hard judgement as a reflection of the mood of mourning and bitterness that has accumulated over decades and centuries within the indigenous communities.

82. Article 70 of the Constitution envisages the preparation of a specific law to regulate matters relating to the advancement and protection of the indigenous communities. Consequently, Congress set up an Indigenous Communities Commission, composed of the only nine indigenous deputies out of the hundred deputies in the Congress. The Commission has worked on drafting the bill on indigenous communities, in implementation of the programming provision contained in article 70. The Centre for Human Rights has provided technical assistance in drafting this bill (see below, Section V: Advisory and technical assistance services). Work on this legislation is still in the initial phase. According to the Chairman of the Commission, there are fears that in the newly elected Congress, there may be fewer indigenous deputies and that the Commission might disappear, bringing the work already undertaken, in particular the work envisaged in article 70 of the Constitution to a standstill. Similarly, the Commission has also been working on the formulation of an assistance programme for widows and orphans of political violence; on a programme to facilitate the registration of Guatemalan children born in Mexico as a result of the exile of their parents; and on drafting the Academy of Mayan Languages of Guatemala Act which was finally enacted on 18 October 1990, by Congress through Decree No. 65-90.

III. THE ARMED CONFLICT

83. The Conference of Bishops of Guatemala, meeting in Quetzaltenango on 26 January 1990, raised the problem of the violence in the country which, according to its own press release, had continued for 20 years. One of the causes of this violence is the armed struggle which Guatemalans have to face in various departments of the country. In this sense, the armed struggle and the violence which it breeds, have a dual origin in the excesses of both the guerrilla and the army. Indeed the army's counter-insurgency campaign has involved civilians in the armed conflict, especially indigenous people and peasants, by forcing them to take part in civilian self-defence patrols and frequently compelling them to walk in the front of the tracking groups, exposing them to confrontation and death. In addition to this kind of violence, the Conference of Bishops also referred to political violence, with ensuing disappearances and violent deaths of university and trade union leaders and members of grass-roots organizations. There is also a kind of violence linked to ordinary crime which takes the form of assault, robbery and murder. Lastly, it would appear that drug trafficking in Guatemala is on the rise, as well as the production of drugs inside the country, which also breeds violence.

A. Violations of international humanitarian law

84. The Expert has received a great deal of information to the effect that the fundamental rights of the non-combatant civilian population are frequently violated, in spite of the fact that Guatemala is a party to the four 1949 Geneva Conventions and its two 1977 Additional Protocols which regulate international humanitarian law. Article 3 common to the four Conventions, and Additional Protocol II, guarantee a minimum of humanitarian treatment for both the civilian population in areas of conflict and for combatants placed hors de combat by being captured or through wounds or sickness. In the case of combatants, there is no information available to show that the army has taken prisoners or picked up wounded people from among the insurgents.

85. On the other hand, the army is known to have waged counter-insurgency campaigns in recent years, using the civilian population for tasks normally carried out by the military, as in the case of the Voluntary Civilian Self-Defence Committees, better known as the Civilian Self-Defence Patrols (PAC), which are to be found in all areas of conflict, but mainly in rural areas in the Departments of El Quiché, Huehuetenango, Chimaltenango, San Marcos, Alta Verapaz, Sololá, Totonicapán and El Petén. The Expert has received statements from witnesses claiming that in some parts of the country, especially in the north of the El Quiché Department, counter-insurgency military operations include air raids and artillery attacks on inhabited or cultivated rural areas. Reports state consistently that in some of the troubled areas, soldiers also set fire to homes, harvests, crops and churches and destroy domestic animals. The civilian population frequently complains of extrajudicial execution, detention and disappearance, intimidation, forcible transfer and resettlement.

86. By way of example, a complaint from the Amachel Area Committee which co-ordinates the area's Communities in Resistance is taken from the Guatemalan Church in Exile's publication Diez años de pacificación contrainsurgente (Ten Years of Counter-insurgent Pacification), July 1990:

"We denounce the criminal acts committed by the Guatemalan army between 12 and 19 March 1990 against our Communities in Resistance:

1. On 12 March, at 11 a.m., an aircraft began to bomb and to machine-gun on our San Marcos community. It dropped six 500-lb bombs, seriously injuring two boys, Pedro Satén Ramos, 14 years old and Candelario Santay Velásquez, 13 years old, who come from the Santa Clara village in the Municipality of Chajul in the Department of El Quiché. They sustained serious and extensive injuries which we have not been able to attend to because we have no medicine or instruments to remove the fragments of shrapnel still embedded in their bodies. This is the sorrow and pain inflicted on us every day by the army.

This bomb attack also destroyed 2 cuerdas (3.46 acres) of corn, some trees and stone walls but most important, our sacred land has been burned. We could never have burned it as these enormous bombs have done, that we, as poor people, have never even seen before. In one go, those bombs leave our land scorched, over an area of 50 square metres.

2. On 13 March, at 11.30 a.m., another war plane arrived to bomb our Xecuxap community in Amachel. It dropped five 500-lb bombs, destroying 2 cuerdas of malanga where we still have not been able to raise anything because everything was totally destroyed by the bombs. That same day, the soldiers quartered in our communities at La Laguna and Mirador in Amachel entered and burned down 15 houses, stole 100 quintales (4,600 kg) of malanga, 15 quintales of maize, destroyed 1 cuerda of coffee and pulled up half a cuerda of malanga, leaving the plants in such a state that they still have not grown back. They are trying to deprive us of our harvest and our food. This is the sadness we live with every day.

3. On 14 March, at 10.50 a.m., the army at La Laguna launched seven powerful projectiles which fell on our communities in Xecuxap, Pimiento and Tzicuaya, destroyed our crops and terrified our population.

4. On 15 March, at 12.00 midday two helicopters arrived with supplies for the soldiers quartered in La Laguna and Mirador in Amachel and then dropped four bombs on our Tzicuaya community, destroying our crops, corn and malanga.

On the same day at 12.15 p.m., an aircraft passed over, bombing and machine-gunning our Arenal community in Amachel, dropping two bombs on our crops. This causes us sadness and hardship because when we work on that land, the unexploded bombs may go off.

5. On 17 March, at 10.00 a.m., the soldiers quartered at La Laguna entered our Arenal community, in Amachel. They burned down six houses and stole our belongings.

6. On 19 March, at 12.15 p.m., the army at La Laguna launched a powerful projectile which fell on our Antigua Amachel community. Then at 12.25 p.m., they dropped another bomb which fell on our village of Cabá, destroying our crops and terrifying our population.

7. In the course of the two weeks that the army has been carrying out its offensive, its air forces have completely destroyed an earth dyke with 32 500-lb bombs in our Antigua Amachel community, destroying the large stones of the wall, scorching the trees and even animals have died, mainly quetzal, hens, turkeys and other birds; this is how far they will go in committing these crimes against natures' creatures.

We are 512 families, suffering from the cold, from the rain and from hunger in the depths of the mountains. We have left our farms in the centre of the Amachel area. The only shelter we have is under the leaves of banana trees and you can imagine what it is like when it rains. All these families, mainly widows and orphans, are without food, clothing and farming implements. This is the sorrow and the sadness we live with every day. We call upon the people and Government of Guatemala, the United Nations, the Central American Presidents and the world at large to make our existence known, to recognize our right to organized resistance in Communities in Resistance and to remain on the land, the site of our resistance, and to respect our rights...".

87. On several occasions, reports have been received that the army is still forcing peasants to join its ranks. This happened in San Lucas Tolimán, where peasants were forcibly rounded up for army service on 29 June 1990 by soldiers in uniform who arrived unexpectedly, together with other people wearing civilian clothes but who seemed to be soldiers. On 27 April 1990, military agents from Santa Cruz del Quiché hunted down young men with the intention of forcibly conscripting them. Similar incidents have been reported in Jalapa and El Petén in January 1990 and in the Pacajà canton in the municipality of Lemoa, Quiché. A large-scale recruitment operation was reported in Guatemala City on 27 and 28 April 1990, carried out by soldiers wearing olive-green uniforms, some with their faces covered with scarves. Young men, aged between 16 and 25, were forced off the urban buses and seized. It was reported that, in the course of this operation, about 900 young men, many of whom were students, were forcibly recruited. Such methods of recruitment were condemned by the Procurator for Human Rights on 6 May 1990. Finally, about 40 individual cases of forcible recruitment were reported to the Expert by members of the Ethnic Communities Council "Runujel Junam" (CERJ) in the Department of El Quiché. Indeed, although the Constitution provides for compulsory military service (art. 135, para. (a)), no draft system seems to have been established by law which would guarantee full equality of citizens with regard to the duty of military service. It is for this reason that, according to obligations which have hardly been contested, most of the drafters belong to the indigenous communities, whereas young people from the Ladino community, in particular university students, have generally been able to avoid doing military service.

88. The so-called "Voluntary Civilian Self-defence Committees", usually known as Civilian Self-Defence Patrols (PAC), are generally used by the army to involve the peasants in military and paramilitary activities. Although article 34 of the Constitution guarantees that "No one shall be required to

join or be a member of a group or association established for self-defence or a similar purpose", there are indeed many reports that continually attest to the obligatory character of these activities. This kind of patrol has spread throughout the country, but particularly into rural areas where there is armed conflict. Some sources have indicated that there are 1,200,000 members of patrol active throughout the country. The army itself in the province of Huehuetenango alone had 300,000 patrol members. It has been claimed that, in addition to violating article 34 of the Constitution, the patrols constitute an infringement of the freedom of movement of peaceful assembly and association, the freedom of residence, as well as of the economic and social rights of the people who are obliged to carry out the patrols, since it is an unpaid activity which prevents them from engaging in their usual occupations.

89. Of the numerous reports received on this topic, particular mention should be made of the fact that on 2 March 1990, various members of the non-governmental organization, the Mutual Support Group (GAM), went to the villages of Chupol and Sacpuluc in support of people who had expressed a desire not to patrol. On their arrival, the members of GAM were met by a group of civilian patrolmen who set upon them, causing a number of casualties. Subsequently, threats to and harassment of people who were unwilling to patrol seem to have continued. On 17 March 1990, María Mejía, a member of the National Co-ordinating Committee of Guatemalan Widows (CONAVIGUA) and of the Ethic Communities Council "Runujel Junam" (CERJ), was murdered at her home in the village of Parraxtut whilst having her evening meal with her husband Pedro Castro, and her two sons, Juan and Domingo Tun Mejía who is a minor. Her killers were two armed men in camouflage, who identified themselves as members of the guerrilla organization, Ejercito Guerrillero de los Pobres. However, Pedro Castro, who was seriously injured by a gunshot wound, was able to recognize the two attackers as the military agents, Domingo Castro Lux and Juan de León Pérez. It is assumed that the motive for this attack was the refusal of the couple's sons to join the civilian self-defence patrols. The organization to which the victim and her husband belonged, the Ethnic Communities Council "Runujel Junam" (CERJ), reported the attacks to the Procurator for Human Rights in the magistrates' courts of Sacapulas and Santa Cruz del Quiché, since another 39 people from the same village of Parraxtut were being constantly threatened by the military agents and civilian patrol members. The judicial proceedings against the aforementioned military agents for their alleged involvement in the death of María Mejía and the serious injuries inflicted on Pedro Castro have progressed very slowly, in spite of the pressure exerted by representatives of the CERJ, for the clarification of the occurrence. On 27 March 1990, when the Deputy Procurator for Human Rights, César Alvarez Guadumuz, was accompanying the people who had be threatened in Parraxtut back to their homes, they had a violent reception from members of the civilian patrols, army officers and military agents. Some days later, Martín de León Ixcotoyac, Pablo Ixcotoyac and Juan Castro Imul, leaders of the civilian patrols in Parraxtut, expressed regret for the incident to the Procurator for Human Rights.

90. Some inhabitants of the village of Sacpulup in the municipality of Chichicastenango withdrew from the civilian patrols in September 1988. As a result, 50 families from this village have reported that they have been the targets of a campaign conducted by the army since January 1990, which has included threats, the burning down of two farms and an attack on a local shop. In February 1990, Lucas Méndez Tecún, the deputy mayor of the village,

reported that he had been threatened by the civilian patrols. Similarly, many members of indigenous communities in the Department of El Quiché who have withdrawn from the patrols, have been subjected to pressure by the patrol leaders and army personnel. Similar incidents occurred in the village of Chupol, in the municipality of Chichicastenango, where members of the Mutual Support Group (GAM) who had come to the defence of people who had refused to patrol were attacked on 2 March 1990 by civilian patrols and military agents armed with clubs and machetes. In July 1990, peasants in Chupol repeated their complaints about intimidation, to which they were still being subjected for having said that they did not wish to patrol.

91. Another member of the CERJ, José Vicente García, was murdered on 10 April 1990 in the village of Chuisalic, in the municipality of San Pedro Jocopilas, Quiché. He had been repeatedly threatened by a military agent (Francisco Yxcoy) and a civilian patrol leader in San Pedro Jocopilas (Santiago Natareño) for having given up the civilian patrol. There is also information that during the demonstration on 1 May 1990 in Guatemala City, José María Ixcaya, a member of the CERJ in La Fé, municipality of Pujujil, Sololá, was murdered. He also had been threatened by the military and civilian patrol leaders for refusing to patrol and for his involvement in CERJ activity. More recently, on 6 October 1990, the disappearance was reported of Sebastián Velásquez Mejía, another member of the CERJ, in the village of Chunimá in the municipality of Chichicastenango, Quiché. According to conflicting reports, his body had appeared days later in Guatemala City and buried in the La Verbena cemetery. His relatives asked for the body to be exhumed in order to identify the corpse. After Velásquez's disappearance, another five members of the CERJ in Chunimá fled the village, fearing attack and took refuge in Santa Cruz del Quiché. Some days later, when the Deputy Procurator for Human Rights was accompanying them on their return home, they were met with hostility and death threats from members of the civilian patrols and consequently were forced to return to Santa Cruz.

92. Other complaints about forced patrols were made by peasants in the canton of San Antonio Sinache in the municipality of Zacualpa, Quiché; in the village of Cruz Quemada, municipality of Malacatanzito, Huehuetenango; in Ixtahuacán, Huehuetenanga, etc. On 16 July 1990, the Procurator for Human Rights received a report concerning the abduction of Samuel de la Cruz Gómez in the Chimalzatz canton, municipality of Zacualpa, Quiché, in which the military agent Ernesto Arévalo Ramos and other army personnel were alleged to have taken part.

93. The Episcopal Conference of Guatemala also reported on 26 January 1990 that the guerrilla was still engaging in terrorism, sabotage and the forcible recruitment of peasants and indigenous persons. According to the statement made by a young person in Amachel, where the army had taken him in December 1989, the guerrilla rarely allows civilians to leave the area under its control and threatens to kill anyone who attempts to do so. He mentioned the case of two youths who were executed by the guerrilla in August 1989 for leaving the area. Similarly, on a public square in Santa Cruz del Quiché, civilian patrollers handed over to the Expert a number of statements testifying to violations of human rights alleged to have been committed by members of the guerrilla, including executions, ill-treatment, threats, etc., against members of the civilian population who have no part in the military conflict. Finally, the Stoltzfus family, who ran a clinic in the Department of El Petén, reported that in August 1990 it had been destroyed by members of the guerrilla forces and that medicines and personal effects had been stolen.

B. Large-scale movements of the rural population

94. In the 1980s, the political and military conflict caused a large-scale movement of the rural, mainly indigenous, population to the mountains, the surrounding regions, the main municipal and departmental towns, and even to the capital. This state of affairs has brought about the internal displacement of the population. At the same time, other displaced persons sought refuge in neighbouring countries such as Mexico, and to a lesser degree, Honduras. Consequently, the internally displaced person, like the refugee, is the product of a situation of internal war in which he might have supported one of the political and military forces involved or might have been caught between the fire of both sides. In either case, it has been said that the authorities have doubts about these people and consider that a political and idealogical approach should be applied to them. The army, to be specific, has always shown special interest in exercising control over this sector of the population. According to a study undertaken by the Association for the Advancement of the Social Sciences in Guatemala (AVANCSO) the re-education to which the internal displaced persons and the refugees who are repatriated are subjected will be decisive when they return to the mountains and their places of origin or resettlement, since this re-education aims "... to neutralize the political influence of the insurgent movement and to channel it in support of the State" (Política Institucional hacia el Desplazado Interno en Guatemala, (Institutional policy towards the internal displaced person in Guatemala) June 1990, p. 67).

95. With regard to the Guatemalan refugees in Mexico, official data from the Mexican Commission for Assistance to Refugees (COMAR) indicate that there are, at present, around 57,600 refugees in three Mexican States: Campeche, Chiapas and Quintana Roo. About 14,000 of them are children born of Guatemalan parents whilst in exile in Mexico. All the refugees are given UNHCR assistance in their place of refuge, and during their repatriation and return to Guatemala. For its part, in 1986 the Government of Guatemala set up the Ad Hoc Committee for Aid to Returnees (CEAR) (Government Order No. 765-86, of 16 October 1986), so that Guatemalan authorities could assist the return of refugees, coming mainly from Mexican territory. Subsequently, Government Decree 422-90 published in the Diario Oficial on 13 August 1990, extended the remit of the CEAR to "... provide assistance to foreign refugees who are on our territory, as well as people who have been displaced from their places of origin through violence to which the population of the country has been subjected". CEAR has a Board of Directors composed of representatives of the Ministries of Foreign Affairs (in the chair), Defence, Urban and Rural Development, the Interior, and the National Reconstruction Committee.

96. The voluntary repatriation of Guatemalan refugees in Mexico began in 1984. So far, 5,729 people have been assisted, according to COMAR official data (5,783 people according to CEAR), of whom 669 returned in 1990. For its part, CEAR has provided the returnees with the necessary papers to enter the country, medical and pharmaceutical services, temporary accommodation at the Repatriation Centre in Huehuetenango, and food. It also transfers them to the villages in which they have voluntarily decided to reside, providing them with construction materials and agricultural implements so that they may build houses and begin to cultivate the land. The returnees also receive a small amount of money to buy their first seeds, as well as basic grain and food to satisfy the family's needs until the first crops can be harvested. CEAR, in

co-operation with town mayors and the authorities from the National Institute for Agrarian Reform (IMTA), also helps to reclaim the returnee's land or obtain other land in the event that he did not own land before his exile.

97. The statistics show that most refugees have still not decided to return, and that compared with 1988, repatriation fell off noticeably in 1989 and 1990. This shows that the exiles feel worried about what the future may hold for them if they resettle in Guatemala. That is why the "Standing Committees" and refugees' organizations laid down strict conditions governing repatriation, including recognition of the right of the returnees to reclaim their original lands, the freedom of organization in the place they choose to resettle, guarantees of security from the Guatemalan Government, guarantees that they will not be subjected to military authorities in their place of resettlement, and that their return to Guatemala be collective, voluntary and accompanied by international representatives, as a guarantee of security.

98. The "Comunidades de Población en Resistencia de la Sierra" are a special phenomena among the internal displaced persons. According to a communiqué published in September 1990, their members are peasants who were forced to leave their places of origin because of the armed conflict, especially in 1981 and 1982. Some estimates reckon that there are about 20,000 such displaced persons, especially in the so-called Ixil Triangle in the Department of El Quiché and particularly in the villages of Xecoyeu, Santa Clara, Amachel, Cabá, Los Cimientos, Xaxboc and Paal, in the north of the municipality of Chajul as well as in other villages of the municipalities of Nebaj, Uspantán, Chicamán, Sacapulas, Cotzal and Cunén, all in the Department of El Quiché, and in the municipalities of Aguacatán and Chiantla, in the Department of Huehuetenango. As they themselves have declared, these villages are in resistance "... against the invasion and occupation by the army of our land, villages and towns; against being subjected to the civilian patrols and the model villages that the army has forcibly imposed on our peoples; to end the repression by the army of our population ...". For these reasons they decided "to defend and to resist by organizing into communities in our own mountains, without abandoning our land and towns". In the communiqué they ask the Government to recognize them as a rural civilian population in resistance, and to recognize their right freely to return to their places of origin, to be reunited with their families in a voluntary, free, organized and collective manner, accompanied and assisted by humanitarian agencies. Accordingly, they also request of the Government the demilitarization of their land, the restoration of the freedom to organize and the abolition of the civilian patrols, development areas and model villages which are, in their opinion, "imposed by the army on our population in order to control us by force and to sow discord among us". They also call on the Government to end the bombing attacks, the shooting and destruction of their houses and crops, to raise the military siege of their communities, and to return their family members who had been "taken by force by the army from our communities and forcibly placed under surveillance and control in the model villages in the municipalities of Chajul, Cotzal and Nebaj".

99. Since 1987, CEAR has been assisting displaced families in Alta Verapaz and Ixcán, Quiché. More recently, in February 1989 an emergency programme was launched to help displaced persons in the Ixil Triangle, Quiché, which consists of attending to the basic needs of the displaced persons,

distributing food and providing medical care and first aid. On 25 May 1988, CEAR set up two care centres for displaced persons in Nebaj, which have been used to supervise aid to displaced persons from the Ixil Triangle. The centres try to cure persons suffering from malnutrition and dehydration. They provided them with food and clothing, and general medical care. According to figures supplied by CEAR, 8,616 people were attended to between 1987 and 1990, that is 2,312 families, 990 of whom (301 families) were treated in 1990.

100. At the same time, CEAR issued more than 784 returnees with papers, acquired 800 caballerias (almost 35,000 hectares) of land for returnees and a further 300 caballerias (12,600 hectares) for returnees without land.

101. Following the statements quoted above, made by the "Comunidades de Población en Resistencia de la Sierra", CEAR, in a communiqué on 5 October 1990, stressed that its aid to refugees, returnees and displaced persons was non-political and humanitarian. With regard to the populations of the Ixil Triangle, CEAR emphasized that it "... has given primary support to displaced persons who had freely decided to return to their home communities or origin", although it recognizes that "this aid is insufficient, given the limited national and international funds available for helping these populations". CEAR pointed out that the development areas had "ceased to exist in 1985", when the Government adopted a policy of "encouraging displaced populations to return to their places of origin". The CEAR also restated "the right of displaced populations to live in peace and to enjoy development to the full; in order for them to do so, their voluntary return to their communities of origin is indispensable", and invited those involved to work alongside international bodies to draw up a plan which would pave the way for such a return, in the spirit of article 8 of the Esquipulas II Agreements.

102. During his visit to Nebaj, at the CEAR care centres for displaced persons, the Expert met indigenous persons of both sexes who were being cared for. They stated, during individual and confidential interviews, that they had been arrested by members of the army during operations carried out in villages in the area of Amachel where they, along with other indigenous peasants, were living in a community. After their arrest, they were taken to Amachel and then flown by military helicopter to Nebaj, where they were placed in the CEAR care centres to recover from malnutrition and other illnesses, including measles which had broken out in the reception centres, leaving seven people dead. In the circumstances, it can not be said that these people were moved to Nebaj of their own free will.

103. Apparently the attention currently being paid to displaced persons can be seen in terms of assistance, since development plans are hindered by measures taken in war zones. Thus, the army is seen as playing an active role, laying down restrictions stemming from its monitoring and surveillance activities while the civil authorities are playing a minor role in reintegrating the displaced persons and in promoting their economic and social development. The study, previously mentioned, by the Association for the Advancement of the Social Sciences in Guatemala (AVANCSO) states that the army gives priority to the development of roads, bridges, schools and hospitals, whilst the displaced persons see their priorities in terms of settling, reorganizing their homes and resuming their farming activities. Thus, the State treats the areas of conflict as if they were war zones, an attitude which is not compatible with a

policy of social reintegration and local development. Consequently, prerequisites of a successful policy reintegrating internally displaced persons must be the termination of military intervention in the repatriation process, a more active role for civilian authorities and the establishment of local entities, consisting of civilians, to observe and monitor the operations. Furthermore, a similar policy should be extended from El Quiché to other areas in the Departments of Alta Verapaz, Huehuetenango, Chimaltenango, Guatemala City, Petén, Izabal and the south coast. At the same time, the question of the maintenance of the Civilian Self-Defence patrols must be addressed in the light of the criticism being levelled at them from all sides.

IV. CIVIL AND POLITICAL RIGHTS. THE ADMINISTRATION OF JUSTICE

A. Reports of abductions and disappearances. Availability of the remedy of habeas corpus

104. Unacknowledged detention, abduction and the enforced or involuntary detention and disappearance of persons, often as a form of political persecution, are not new in the Guatemalan context. The most recent report of the Working Group on Enforced or Involuntary Disappearances states that in the last 10 years, a total of 3,000 cases of alleged detention and disappearance have been transmitted to the Government (doc. E/CN.4/1990/13, para. 142), 40 of which are alleged to have taken place in 1989. The Government clarified 41 cases, including 3 deaths, and non-governmental sources have helped to throw light on 69 cases, including 26 deaths. Finally, at the end of 1989 the Working Group still had 2,990 outstanding cases. In the light of this situation, the Working Group requested the Guatemalan Government to appoint an official commission to investigate the disappearances since, according to repeated allegations by non-governmental organizations, neither the Judiciary nor the police were making in-depth inquiries into the reported disappearances. It was further alleged that judicial officials are prohibited from entering secret detention facilities, particularly in military installations and some national police headquarters. For these reasons, the remedy of habeas corpus has not been effective.

105. On 19 April 1989, the President of the Republic set up the Advisory Commission on Human Rights Matters to the Office of the President of the Republic; the Commission has proposed measures such as the establishment of a Central Register of Detainees and sending Judicial Department circulars to judges informing them of the procedures to be followed concerning applications for habeas corpus, and particularly the obligation to investigate the disappearance of a person when the case has been dismissed because the person in question did not appear to be under detention. In addition, the national police and military authorities have been informed of their obligation to supply data to be entered in the Central Register of Detainees. Finally, the Government provided information about the co-ordination between the Judiciary and the security forces, via the System for the Protection of the Citizenry (SIPROCI) which is under the direct control of the Office of the President of the Republic, and at the same time he also rejected insinuations that members of the security forces and the police were linked to human rights violations or that members of the "death squads" could be from those forces.

106. With regard to 1990, the Expert received detailed reports of 65 new cases of alleged detention and disappearance. Other sourcces have reported a larger number of disappearances over the same period. Between January and October 1990, the Procurator for Human Rights compiled 72 cases of abduction and enforced disappearance, whilst the non-governmental organization, the Guatemalan Justice and Peace Committee, has reported 198 cases for the period January to September 1990. These sources also state that the people responsible for the disappearances are armed men, wearing uniforms or civilian clothing, who abduct the victims from their home at night and drive them to an unknown destination. When the corresponding applications for habeas corpus are filed, they are unsuccessful because the victims are not in the usual detention centres, which suggest that they may be sent to secret army or police prisons. People abducted in this way are often found a few days later, having been murdered and tortured.

107. According to a study carried out by the Centre for Human Rights Research, Study and Promotion (CIEPRODH) on applications for habeas corpus transmitted to the registry of the Supreme Court of Justice between July 1987 and December 1989, a total of 5,729 such applications were received. The judges dealing with such remedies ran into problems which prevented them from carrying out their legal responsibilities, such as a lack of financial resources for travel and the power wielded by heads of police stations and military barracks, in addition to the threats and intimidation they faced when they tried to enforce habeas corpus in what were alleged to be secret detention centres. As a result, of the 5,729 applications filed, 187 of them were declared founded and 588 unfounded. With regard to the persons on whose behalf applications for habeas corpus were made, only 215 have reappeared, along with another 28 who were legally detained. Information has also been received that another 568 persons have not been located in any of the country's detention centres. In short, out of the 5,729 applications filed, 4,128 went unanswered, having been filed by the courts to which they were referred "pending investigation" by the police. In the opinion of many judges, the remedy of habeas corpus is effective only when the person involved is in prison, but not when there are political reasons for the arrest since, in these cases, authority lies with the security forces or paramilitary groups which, according to CIEPRODH, act with impunity.

108. In 1989 the United Nations provided the Guatemalan Government with the services of an adviser to assess the investigations into cases of enforced or involuntary disappearance and to advise the Government in this regard. The report of the adviser, Mr. Alejandro González Poblete, who was at the time Head of the Legal Department, Vicaría de la Solidaridad, Archbishopric of Santiago, Chile, identified notable shortcomings in the training of the police force, and in relation to the Judiciary, a lack of co-operation by the public in the investigation of offences and a lack of activity by the Public Prosecutor's Department (E/CN.4/1990/45/Add.1, paras. 3-26). Thus, the judicial decisions which shelve cases "pending investigation" in practice are tantamount to bringing the investigation to a standstill, because of the inadequate professional training of judicial officials and shortcomings in the working methods of both the courts and the police.

109. On the other hand, the adviser commented that, although the System for the Protection of the Citizenry (SIPROCI) could be justified as a temporary measure in view of the current defects, a professional police organization should have the monopoly of preventing and suppressing crime. He therefore recommended the establishment within the national police of a central investigating unit to look into all the cases of enforced disappearances, extrajudicial executions and other forms of political crime, including threats and short-term abductions. He added that political crime is more complex that just a succession of isolated deeds since behind them, in the planning and the selection of victims there are unlawful organizations and associations. Consequently, to halt these activities is not enough to discover and punish the actual perpetrators; it is essential to identify these organizations and to prosecute the master-minds.

110. With regard to the Public Prosecutor's Department, the adviser affirmed that it "does nothing very much in the investigatory stages of the case", in spite of the fact that "the interests of society are involved in the investigation and legal punishment of offences and that the Public Prosecutor's Department was set up precisely to represent those interests" (ibid., para. 17). With regard to the work of the Advisory Commission on Human Rights Matters to the Office of the President (COPADEH), the adviser considered that its contribution to the clarification of cases of enforced disappearance is minimal since "it has done nothing about situations that occurred before the present Government took office", whilst "there appears to be no justification for the self-denying limitation of its competence to simply establishing the fate of the missing persons" (ibid., para. 25).

111. With the intention of overcoming some of the problems which have been identified, a co-operation agreement came into force in 1987 between the Guatemalan Judiciary and the Criminal Justice Centre of Harvard University Law School, on matters related to the administration of justice. In August 1990, Harvard University withdrew its advisory services, alleging a lack of political will on the part of the Guatemalan authorities at the highest level to investigate crimes in which security forces were suspected of being implicated. Of the best known cases, particular mention was made of the case involving the abduction, torture and murder of two students from the Occidente University Centre of San Carlos University, which took place in September and October 1987 in Quetzaltenango. Four officers and two heads of the national police of Quetzaltenango had been sentenced at first instance as the perpetrators of the crime, but were acquitted by the fourth division of the Court of Appeal. The Supreme Court subsequently endorsed this decision.

112. In the period from 1987 to 1989, the Mutual Support Group (GAM) submitted 139 applications for habeas corpus on behalf of victims of arbitrary or illegal detention. Of the 139 persons who gave rise to the applications, 14 were found murdered, showing signs of torture; 3 people were freed and the remaining 122 people are still missing, but have not been located in any detention centre. Of the 139 people, the majority were men, indigenous persons (63.3 per cent), aged between 18 and 37 (69.8 per cent). They had all been detained without a court order. According to GAM, the judicial authorities had not taken the trouble to send a single notification to the requesting organization.

113. The Ethnic Communities Council "Runujel Junam" (CERJ) informed the Expert of a series of applications for habeas corpus which had been filed by the organization in 1990, on behalf of 66 people in respect of death threats, unlawful detention or the detention and disappearance of indigenous persons.

114. According to one witness who wished to remain anonymous, the "death squads" were run by officers of the armed forces, including the navy, and controlled by the military security service known as "G-2". He also affirmed that the "death squads" apparently had secret prisons at various military establishments in Guatemala City, in particular the Escuela Politécnica (professional training school), the Mobile Military Police (zone 6), the Mariscal Zabala Barracks (zone 17) and the Justo Rufino Vargas Central Barracks (zone 1).

B. Extrajudicial executions

115. Politically motivated summary or arbitrary executions are among the serious human rights problems that have affected Guatemala for many years. In addition to the violence generated by the political and military conflict itself, mentioned in section III A of this report, this section deals with the selective political violence attributable, according to complainants, to "death squads" or paramilitary groups. The summary executions in question are frequently accompanied by death threats made against members of the victim's family or of his organization (political, trade union or indigenous). Moreover, a summary or arbitrary execution is generally the culmination of a process that begins with the violent kidnapping or enforced disappearance of the victim, who is taken to secret detention centres, subjected to interrogation involving severe torture before he is executed and his corpse abandoned in the street, showing clear signs of physical torture. Such practices are wholly attributable to the political persecution of dissidents who criticize the status quo in Guatemala through peaceful means.

116. Estimates of the number of such executions in Guatemala in 1990 vary, depending on the source consulted. Thus, the Procurator for Human Rights reported 292 violent deaths between January and November 1990. However, according to non-governmental sources, over the same period the number of executions was 470 (Guatemalan Human Rights Commission) or 1,055 (Comité Pro Justicia y Paz de Guatemala - Guatemalan Justice and Peace Committee). The discrepancy between the figures provided by the various sources is attributable, inter alia, to the difficulty of obtaining reliable information on the circumstances of the violent death of a particular individual, and of distinguishing execution on political grounds from violent death attributable to ordinary crime (robbery, violent assault).

117. The Expert has himself received detailed information on 30 cases of clearly politically motivated death threats, 29 cases of politically motivated summary executions and 4 cases in which the victims were human rights activists. Moreover, the victims of summary executions that took place in 1990 were all trade unionists, peasants, student leaders and candidates of political opposition parties killed in the months leading up to the general elections held on 11 November 1990. As far as those responsible for the executions are concerned, the complainants have identified members of the security forces, paramilitary groups linked to the security forces or civilian self-defence patrols.

118. Furthermore, the Expert received information on six cases involving minors, known as "street children" whose mutilated corpses were found in public places in Guatemala City and who, according to the reports, were allegedly tortured and executed by members of the national police.

119. With regard to executions on political grounds linked to the electoral campaign, the violent death of Carlos Ramírez Cruz, secretary of the Partido Socialista Democrático (Democratic Socialist Party-PSD) in Santa Rosa on 15 October 1990 should be mentioned. Humberto Pérez Cos also met a violent death in San Pedro Jocopilas, Quiché on 10 or 11 October 1990, as did Sebastián Morales López, on 16 September of the same year; both victims were members of the Democracia Christiana Guatemalteca (Guatemalan Christian Democracy). Other victims were Salomón Blanco and Celso Girón, members of the Unión de Centro Nacional (Union of the National Centre-UCN), on 28 August 1990. The leader of the Movimiento de Liberación Nacional (National Liberation Movement-MLN) Marcos Osorio Chivalán was killed on 9 October 1990 in Santa María Chiquimula, Totonicapán. On 15 October 1990, the journalist and General-Secretary of the Unidad Revolucionaria Democrática (Democratic Revolutionary Front-URD), Humberto González Gamarra, was murdered, and on 25 July 1990 the UCN deputy Otto Rolando Ruano Reyes was executed together with his bodyguard Roberto de Jesús Espinoza. On 26 October 1990, Refugio Araceli Villanueva de Barrera, wife of the journalist Byron Barrera Ortiz, was shot dead. Her husband, who was wounded in the attack, decided to leave the country when he recovered.

120. The human rights activists who met with violent deaths during the period include: José María Ixcaya, a member of the Ethnic Communities Council "Runujel Junam" (CERJ) , killed on 1 May 1990; Pedro Tiu Cac and his son José Pedro Tiu Chivalán, both of whom were members of CERJ, killed on 4 July and 5 October 1990 respectively in Chajab, Racaná village, Santa María Chiquimula Municipality, Totonicapán Department; the anthropologist Myrna Elizabeth Mack Chang, a researcher for the Association for the Advancement of the Social Sciences in Guatemala (AVANCSO), killed on 11 September 1990; Sabastián Velásquez Mejía, a member of CERJ, killed in the village of Chunimá, Chichicastenango Municipality, Quiché, on 6 October 1990; Mateo Sarat Ixcoy, a member of CERJ, killed in the village of San Pedro, San Pedro Jocopilas Municipality, Quiché, on 29 October 1990. More recently, on 20 October 1990, Aroldo Estuardo Alverado Morales, a secondary-school teacher, disappeared and his body was later found, bearing traces of torture, on 1 November 1990. The trade unionists murdered include: Petronilo Hernández Vasilo, killed on 1 July 1990 in front of his house in Jutiapa, and Oscar Humberto Portillo y Portillo, killed on 19 July 1990 in the village of Asunción Grande, Asunción Mita Municipality, Jutiapa Department.

121. During the night of 1 to 2 December 1990, an army lieutenant from the military detachment in Santiago Atlitán, Sololá threatened and attempted to kidnap a local inhabitant from his home. When the victim resisted, the lieutenant shot and wounded a person twice. The inhabitants (between 1,500 and 2,000 persons) assembled in the main square of Santiago and headed toward the military post to protest peacefully against the incident, and requested to speak with the commander of the base. The soldiers opened fire with machine guns, killing 11 persons, (including 3 children) and wounding 19 others, some seriously, who were transferred to the hospitals of Sololá and Guatemala City.

According to subsequent information, two of the most seriously wounded died in hospital. As emphasized elsewhere in this report, there is no question as to the responsibility of the army in these reprehensible incidents (see above, Section I.B.: The role of the army).

122. The judicial investigations into the repeated complaints of summary executions on political grounds have in practice yielded no tangile results, as in most cases the courts or security organizations have failed to identify the perpetrators of the acts of violence. Only in a limited number of cases has it been possible to identify the alleged culprits, although even in these cases no punishment has been prescribed. Such is the case of the police chief of Quetzaltenango Department, Catalino Esteban Valiente Alonso who, together with five other police officers who had been identified, was sentenced by a court of first instance to a heavy custodial penalty for the kidnapping and murder of two students, Danilo Sergio Alvarado Mejia and René Aroldo Leiva Cayax, in July 1988 in the town of Quetzaltenango. However, the Court of Appeal and subsequently the Supreme Court quashed the sentence handed down at first instance on the grounds that the involvement of the police officers in the murder of the two students had not been sufficiently proved, and ordered their release. Another case in which the police investigation made exceptional progress in 1990 was the murder of the United States citizen Michael Vernon Devine in Poptún, Petén Department, on 8 June 1990. In this case heavy diplomatic pressure was exerted on the Government. The authorities identified the suspects as "collaborators of the armed forces". It was later confirmed that four of those involved were members of the army counter-intelligence Unit who had been trained at the Kaibiles School. The persons in question were apparently detained, although no further information is available as to their fate. Moreover, it should be emphasized that the Head of the national police force has implemented a programme to purge the force. He has presented a number of members of the institution, allegedly involved in corruption, to the public on television and promised they would be punished.

123. However, the lack of success of judicial investigations into murders and disappearances has revealed some shortcomings in the State's crime-prevention system and in the administration of justice. In this connection, Mr. Julio Maier, who was sent by the United Nations to Guatemala in 1989 to provide advisory services in this sphere, observed in his report that the Guatemalan judicial system was highly verticalized, and that the Public Prosecutor's Department "plays a purely formal role in the proceedings", on account of which "the judges have to assume both legally and practically, the simultaneous functions of interrogator (prosecutor) and adjudicator (E/CN.4/1990/45/Add.1, para. 30). He added that the true function of the Public Prosecutor's Department is "that of prosecution, including the conduct of a preliminary investigation, with the help of the police, to find the culprit for submission to the court" (ibid., para. 34). Under such a system, judges would be solely concerned with the work of adjudicating, in addition to being competent to decide in respect of aspects of the investigation in which guarantees concerning human rights were involved. Accordingly, Mr. Maier advocated a radical transformation of the criminal justice system in Guatemala. Specifically, he recommended the introduction of public trials in criminal matters and modification of the system of preliminary investigation, with greater involvement of the Public Prosecutor's office, while the task of handing down sentence and ensuring observance of

individual guarantees should be the responsibility of the judges. With regard to the national police, he remarked on the low level of civic education imparted to its members, their tendency towards bureaucratization and the low wages that encourage corruption. Lastly, with regard to the problem of the indigenous population, he recommended that their culture should be respected and that they should be involved in the task of judging their peers perhaps by trial by jury (ibid., paras. 55-58).

124. The Government responded to the above recommendations by amending the Code of Penal Procedure, although it was unfortunately not adopted by Congress before it rose from its 1990 session.

125. At a meeting with the Director of the national police, Julio Enrique Caballeros, the Expert was informed that energetic steps had been taken to reorganize the police and to clean from it elements that did not strictly abide by the rule of law. This information is highly welcome, since it shows that, if there is a political will, the police can embark upon a process of reform which, in any event, must be strengthened and intensified. Like the armed forces, the police must conceive of its role as being an institution whose only task is to serve the general welfare of the nation by securing law and order in full respect of the laws of the Republic. It is clear that the low level of salaries exposes police agents from time to time to serious temptations, if and when they are asked by criminal elements to turn a blind eye to, or even co-operate in, the commission of offences. Educational efforts should be intensified to prevent any such criminal involvement. In addition, effective disciplinary mechanisms are needed in order to sanction any possible violation of professional rules or even of the Penal Code.

126. Those few individuals who have been brought before the courts on charges of involvement in disappearances, torture or summary executions on political grounds, have not in the end been punished, on some occasions because of a lack of political will and on others because of shortcomings in the administration of justice. In the opinion of the Commission on Human Rights Special Rapporteur on torture, who visited Guatemala in September 1989, leaving such serious crimes unpunished has, in conjunction with the high levels of violence prevalent in Guatemalan society for many years, led to a "climate of lawlessness and terror" (E/CN.4/1990/17, para. 212). Consequently, the perpetrators of such crimes, who allegedly belong or are linked to the armed forces, enjoy almost total immunity from prosecution. In such circumstances, the credibility of the democratic system suffers, as citizens realize that the civil authorities no longer possess the political will to call a halt to such extensive immunity from prosecution which in itself constitutes a denial of the rule of law.

C. Freedom of expression

127. Among the positive features which the Expert has been able to witness during his stay in Guatemala is the actual significance of freedom of the press. Several large daily newspapers with national-wide distribution exist side by side. It emerges clearly from their perusal that journalists enjoy real opportunities to report about current events, be they to the advantage or to the disadvantage of the Government. In accordance with this basic orientation, the public is, inter alia, regularly informed about the worst

crimes which have been committed, in spite of their being of a political nature. Disappearances and extrajudicial and summary executions even receive specific attention. However, the Expert has not been able to read any detailed analysis about the possible responsibility for criminal acts with a political background. Journalists seem to shy away from publicly expressing their views on such matters.

128. It is clear from the foregoing account of the precarious situation of the members of human rights organizations and trade unions in particular that the prevailing state of public insecurity also undermines freedom of expression. Whoever utters views that denounce injustices, exposes illegitimate power centres and makes proposals for sweeping reforms must fear for his or her life. Indeed, several journalists have been victims of murderous attacks. On the other hand, it is still true that the democratic opening of the country has enlarged the scope of public debate to an extent that would have been inconceivable even 10 years ago.

V. ADVISORY SERVICES AND TECHNICAL ASSISTANCE

129. In recent years Guatemala has benefited from an extensive programme of advisory services and technical assistance provided by the United Nations. The programme has included advice to the Ministry of the Interior and Justice in relation to enforced or involuntary disappearances, as well as advisory services and training for police and judicial personnel. Furthermore, the Office of the Procurator for Human Rights has received assistance from the Spanish Parliamentary High Commissioner, also provided by the United Nations. In addition, the programme has been extended to the Advisory Commission on Human Rights Matters to the Office of the President of the Republic and to the Ministry of Foreign Affairs, and has also included the organization of training courses on human rights. The Commission has been duly informed of the above in document E/CN.4/1990/45/Add.1, dated 12 December 1989.

130. Advisory services have also continued to be provided in two other spheres throughout 1990. The first concerns the promotion of human rights through education. In this connection, in 1989 the United Nations provided the Ministry of Education with the services of an adviser, Mr. Marco Antonio Sagastumo Gemmell, who focused his activities on the following: selecting and training a team of 10 persons to teach human rights; planning an educational project on human rights for primary-school teachers; advising on the introduction of human rights into primary education and preparing the appropriate teaching materials on human rights; developing policies for fostering belief in the rule of law as a prerequisite for the observance of human rights. The adviser made the following recommendations: the continuation of the project on human rights education with the appointment of two trained officials to provide services to the teaching profession; the launching of a national campaign on human rights education in 1990; the organization of a seminar on "human rights education and the teacher's responsibility"; the acquisition of educational material on human rights for the country's public libraries; the introduction of the subject of human rights into official primary education and the dissemination through the mass media of educational programmes concerning human rights (see E/CN.4/1990/45/Add.1, paras. 69 and 79).

131. In the light of these recommendations, the United Nations extended the services of the adviser, Mr. Sagastume Gemmell, who worked in the Office of the Procurator for Human Rights, throughout 1990. Within this context, the adviser taught five human rights courses to all the personnel of the Procurator's Office (120 persons). In addition, he prepared educational material to allow all final-year teaching diploma and baccalaureate students to carry out a research project entitled "The rule of law and human rights", involving a total of 200,000 students. He also prepared a teaching project on human rights and women, on account of the role women play in informal teaching (the home) in transmitting the values contained in human rights standards, and gave 67 lectures on the topic, essentially in rural areas which were attended by 2,010 women. He also drew up a programme to teach human rights to members of co-operatives, as 1,200,000 persons are involved in the co-operative movement in Guatemala. The programme will reach 400 members of co-operatives. The adviser also prepared a basic human rights course for members of the police, taught 300 police officers and recommended the appointment of an official to defend rights and to ensure that the police carry out their duties. The adviser also directed his attention to the juvenile sector and taught human rights to 422 young people in Guatemala City, whom he appointed "defenders of peace and human rights" and who subsequently set up a "young people's human rights association" which organized an additional basic course for a further 1,200 young people. The adviser also gave 23 lectures on human rights and educational techniques to 124 primary-school teachers, visited 30 cultural centres in the various departments, at which he gave lectures to 820 persons, and prepared a course on human rights for journalists that was taught to 60 provincial journalists. Finally, the adviser prepared human rights educational material designed for those sectors on which his efforts had focused throughout 1990, and in particular for the indigenous populations and women. In his view, "It is vital to pursue the activities of all institutions that monitor the protection of human rights and carry out preventive or educational activities in the sphere".

132. The second area in which advice and technical assistance which was begun in 1989 and continued throughout 1990 was advice on promotion and protection of the rights of indigenous communities. In this sphere the United Nations provided the services of the adviser, Mr. Augusto Willemsen Díaz, an Expert on indigenous affairs and former staff-member of the Centre for Human Rights. In 1989, the adviser provided training for officials from the Ministries of Urban and Rural Development, Education, Culture and Public Health, from the Advisory Commission on Human Rights Matters to the Office of the President and from the Indigenous Communities Commission of Congress. The report of the adviser on the activities carried out in 1989 appears in document E/CN.4/1990/45/Add.1, paragraphs 81 to 147.

133. In 1990, the adviser concentrated on the work of the Indigenous Communities Commission of Congress on the drafting of a bill on indigenous communities which will develop the programme set forth in article 70 of the 1985 Constitution. The adviser noted that "for the first time in the country's history the drafting of a law would be undertaken from the viewpoint of the indigenous communities, within the framework of their cultural models and specific inspiration as distinct peoples and communities". Thus, and in mutual agreement with the Commission, it was decided that "work would proceed in the context of the international human rights instruments and the

standards, principles and specific criteria adopted, or under preparation by the United Nations or its specialized agencies on the rights of indigenous peoples and communities". From the organizational viewpoint, it was also agreed to proceed "with the participation of the various sectors of indigenous opinion and of the grass-roots communities and organizations at the different stages of formulating the text, as a prerequisite for ensuring its legitimacy".

134. So far, the following topics have been discussed and approved, on a provisional basis:

(a) Conceptualization of indigenous peoples and communities;

(b) Basic State policy towards indigenous peoples and communities;

(c) Religion;

(d) Language;

(e) Indigenous education;

(f) The administration of justice;

(g) Health, medicine and pharmacology;

(h) Housing;

(i) Indigenous development within the framework of national development.

135. However, at the close of 1990, discussions were still pending on the following topics:

(a) The objectives of the Act;

(b) Activities and participation in mainstream politics;

(c) Contacts, relations and information;

(d) Administrative arrangements;

(e) Indigenous land and territory;

(f) Traditional occupations and technology;

(g) Indigenous culture, traditions, customs, institutions and legal system;

(h) General rights and duties. The question of compulsory military service;

(i) Work, employment, training and the acquisition of skills.

136. In the view of the adviser, it is essential that these activities should continue in 1991, once the new Congress voted in by the elections held on 11 November 1990 is constituted, as the draft project "offers considerable

hope, within the process of identifying ways and means of laying the foundations for legislative activity by the State", of providing "a legal channel for some of the fundamental demands made by the indigenous peoples and communities, vis-à-vis the State itself, society at large and to other sectors of society". The Indigenous Communities Commission of Congress again requested the United Nations to maintain the services of the adviser to complete preparation of the bill on indigenous communities in the course of 1991.

VI. CONCLUSIONS AND RECOMMENDATIONS

137. The Expert wishes to thank the Government of Guatemala for the assistance and co-operation with which they have provided him. He has been able to interview everyone with whom he wished to speak. Likewise, it was open to him to travel freely in all those parts of the country he had included in his programme of visits. All the members of the Government he had requested to see, including the President, were willing to receive him for talks.

138. The situation of human rights in Guatemala during the year 1990 warrants the following conclusions and recommendations:

Public insecurity

139. Guatemala is still dominated by a general climate of public insecurity. The people of Guatemala live in a state of fear. Disappearances and murders have been going on at a frightening rate during 1990, although the number of actual victims has slightly decreased by comparison with 1989.

140. The authors of such capital crimes are almost never identified and brought to trial. Even in political and legal circles, many speak of a de facto principle of impunity, which subverts the moral foundations of a civilized society.

141. The lack of respect for the basic rights of the human being has many deep roots. Social injustices, in particular the extreme poverty of large parts of the rural population, create tensions in which some elements of the population may view the use of force as the only means to vindicate their expectations, while others resort to violence to defend their rights and interests. Undoubtedly also, 30 years of fighting between the guerrilla and the armed forces has established, in the eyes of some fringe sections of the population, the killing of human persons as an almost "natural" way of conflict resolution.

142. In spite of this historical mortgage, whose consequences cannot be easily eradicated, it would certainly have been possible for the Government to take more drastic steps to stem the continuous flow of criminal violence. With the co-operation and assistance of the armed forces, it should have been able to identify the criminal groups and bring to trial most of the individuals that, until now, have operated without having to face a serious response from public authorities.

143. It must be one of the primary objectives of the new Government to affirm its authority over the armed forces and to enlist their co-operation with a view to putting an end to the permanent threat of violence and death deriving from the existence of death squadrons, para-military groups and other groups attached to using violent means.

Machinery for the prevention and repression of crime

144. With regard to the most serious violations of human rights, which have put in jeopardy and destroyed human life, the action taken by the police, the Public Prosecutor's Office and the judiciary is clearly unsatisfactory, almost meaningless.

145. There is an urgent need, on the basis of a determined resolve of the Government, to enhance the investigative power of the police, make the work of the Public Prosecutor more effective and streamline judicial proceedings in criminal cases by putting into force the new Code of Criminal Procedure whose draft was already pending before the outgoing Congress.

Procurator for human rights

146. The courageous work done by the Procurator for Human Rights through education and investigation has made an important contribution to strengthening human rights. In particular, the Procurator has instilled in Guatemalans a new hope that change to a more just and equitable future can be brought about.

147. His activities deserve full support, both on the part of the Congress and of the international community. The assistance provided by the United Nations Centre for Human Rights for the promotion of human rights and in particular for the purpose of human rights education should continue.

Civilian self-defence patrols

148. In rural areas, many people continue to be compelled to join the ranks of civilian defence patrols, in violation of the constitutional provision (article 34.2) which explicitly rules out such coercion.

149. The new Government must see to it that also in this respect, the rule of law be strictly observed.

150. By desisting from further attempts to militarize the indigenous populations in the countryside, the Government and, under its control, the armed forces can promote a spirit of mutual understanding in consonance with the process of national reconciliation.

Contribution of the guerrilla to the peace process

151. Also the "Unidad Revolucionaria Nacional Guatemalteca" (URNG) is required, and must be expected, to contribute to a peaceful solution of the conflict. Its active participation in the process of national reconciliation reflects a constructive political will that aims at building a common future with all sectors of Guatemalan society. The leaders of the URNG must prevail on their fighters to refrain from all violent action against civilians and all sorts of criminal acts and terrorism.

Economic and social rights

152. The situation of economic and social rights is lamentable in many fields. The existing rate of illiteracy, in particular among indigenous populations and the female element of those populations, is simply unacceptable in a State that has undertaken firm commitments to ensure the right to education under the International Covenant on Economic, Social and Cultural Rights. Another cause of serious concern is the high rate of infant mortality, due to malnutrition, and the poor equipment of most hospitals.

153. In view of this state of social emergency, the new Congress will have to give serious consideration to rearranging the balance of public funds in the national budget. The international community should also strengthen its development assistance to the country so that the basic needs of all Guatemalan citizens can be satisfied.

Indigenous populations

154. The situation of indigenous populations continues to cause fundamental preoccupations. Little interest has been shown by the prevailing political forces of the country for the specific concerns of those populations. One exception is Decree No. 65-90 of 18 October 1990 by which the Congress which promulgated the Academy of Mayan Languages Act of Guatemala.

155. Imaginative and renewed efforts should be undertaken to bridge the gap between the Ladino and the indigenous communities. Specific attention must be given to the linguistic rights and the land rights of the indigenous groups. The initiative to draft a special law setting forth the specific rights of the indigenous populations should be pursued with vigour and determination. The assistance provided in this field by the United Nations Centre for Human Rights should continue.

The democratic process

156. For the second time, parliamentary and presidential elections took place under the terms of the Constitution of 1985. All available evidence indicates that President Cerezo will be able to carry on his mandate until its expiry on 14 January 1991. Thus, despite two military coup attempts which were directed against the outgoing Government, the democratic process has now taken firm roots in Guatemala. One may safely assume that the existence of a democratically elected Congress and President will strengthen the rule of law and respect for human rights.

157. The democratic process must be intensified and enlarged to include all sectors of the Guatemalan society including those which until now are not represented by the existing political parties.

The armed forces

158. Although reports of serious human rights violations allege that members of the armed forces are responsible, it is often difficult to verify these reports since, as has already been observed, the official investigation machinery is virtually inoperative. Nevertheless, the report by the Procurator for Human Rights on the massacre of 13 indigenous people in

Santiago Atitlán on the night of 1 to 2 December 1990 leaves no doubt as to the responsibility of the army as an institution, and of officers of the local military post in particular. Furthermore, the Procurator ordered that those responsible be brought before the courts and recommended that the army should change its behaviour, withdraw the unit from Santiago Atitlán and pursue investigations to identify the perpetrators of the acts in question.

159. At the political level, the Government must assert and enforce its control over the armed forces. Within the armed forces, control mechanisms must be established and strengthened with a view to avoiding any implication of units of the armed forces in criminal activities. No para-military groups, nor clandestine prisons, should be permitted to exist and operate.

The national dialogue for reconciliation

160. The dialogue for national reconciliation has become a source of hope for all Guatemalans.

161. The Government and, under its control, the armed forces should overcome their reluctance to join the talks with the URNG in which, until now, all other sectors of the Guatemalan society have participated.

Human rights education

162. Respect for, and observance of, human rights must become a quasi-natural component of the conduct of all law enforcement officials, including the military. To this end, an extensive programme of education on human rights should be provided regularly as part of the normal curriculum of those officials during their training periods, generalizing the experiences gained under the programmes carried out with the assistance of the United Nations Centre for Human Rights. At the same time, a careful examination of existing curricula is necessary with a view to determining whether they contain any components which are incompatible with the basic idea of human rights.

Refugees and displaced persons

163. The plight of the refugees, the displaced persons and the "Comunidades de Población en Resistencia de la Sierra" must not be forgotten. They should be given the opportunity to return to their homelands under full guarantees of physical integrity. Assistance from the international community would greatly facilitate the process of reinsertion of those people into the Guatemalan society. In particular, the members of the "Comunidades de Población en Resistencia de la Sierra" are in urgent need of humanitarian assistance.

International human rights instruments

164. In full agreement with the previous Expert, the present Expert recommends to the Government of Guatemala that it:

(a) ratify the International Covenant on Civil and Political Rights as well as the Optional Protocol thereto; and

(b) withdraw its unacceptable reservation to article 8 of the Inter-American Convention to Prevent and Punish Torture.

Further action by the Commission on Human Rights

165. The Expert recommends that the Commission continue to observe the situation of human rights in Guatemala in the manner it may seem appropriate, given the picture which the present report has attempted to draw.

VII. FINAL REMARKS

166. The conclusions and recommendations set out above coincide largely with those of the previous Expert. It is clear that the outgoing Government, for which 1990 was the last year in office, could not easily launch imaginative new initiatives on matters which had not been sufficiently taken care of until then. A new Government, with its fresh democratic legitimation, finds itself in a much better position to embark on reforms of even a fundamental character. It should have the courage to take such steps, no matter how deeply measures for the promotion and protection of human rights may touch upon the vested interests of people hitherto enjoying illegitimate benefits.

167. Bearing the above considerations in mind, it may also be useful to think of a change of terminology, which would reflect a fundamental change in the conceptual approach to the key problems Guatemala is presently struggling with. The Expert, during his conversations with Government officials, often heard the argument that certain measures were necessary in the interest of the State. However, the State is an abstract concept. It should not be viewed as possessing metaphysical qualities transcending the interests of the people which has shaped it as an instrument entrusted with securing public welfare and making peaceful coexistence possible. Therefore, in each case, the real question to be asked must be whether a specific measure promotes and fosters the well-being of the people, from which all State power derives.

168. A new phase in the history of the country requires a spirit of mutual tolerance and trust. At the root of the death toll which Guatemala has had to endure for many decades lies a conception according to which armed force is the primary instrument to defend legitimate rights and interests. Guatemala's experiences with the working of a truly democratic system are scarce. To many, the inherent qualities of a political régime which relies on arguments and persuasion rather than on naked force are not obvious. It is for this reason that the process of national reconciliation is of such great importance to Guatemala. Here, people from almost all sectors of the Guatemalan society attempt to overcome their differences by peaceful means. It would seem imperative that the process of reconciliation be broadened to include all groups, organizations and institutions which have an impact on the future development of the country. In particular, the new culture of dialogue should also involve the armed forces, as they are an integral element of the Guatemalan society. Furthermore, it would also appear advisable to strengthen the existing links with the Congress in order to avoid the erroneous impression that there exist two types of national representation competing for influence and power.

169. Without international assistance and co-operation, fundamentally new policy orientations have little chance of success. It is certainly true that the international community feels a certain sense of frustration about the performance of the Government of President Cerezo over the preceding five years. The arrival of a democratically elected President after many

years of civil war, of bloodshed and dictatorship had aroused many high-flying hopes. Few of these hopes have come true. In all fairness, one must acknowledge that President Cerezo had to face up to a formidable task. Not only had he to reform the machinery of the State, it also fell to him to change social structures from a spirit of violent confrontation to a climate of peaceful tolerance. With the launching of the process of national reconciliation, a new way to a better tomorrow has been found. It now depends on the resolve and the will of all Guatemalans as to whether concrete results can be reached in a not too distant future. In any event, the social foundations now exist which appear to allow a transition of the Guatemalan society to a state of peaceful co-existence of the different ethnic communities, characterized by a culture of dialogue supporting effective enjoyment of human rights, to the benefit of everyone.

Annex

PROGRAMME OF WORK OF THE EXPERT DURING HIS MISSION TO GUATEMALA
(including visits to New York, Mexico and Washington)

Date	Places visited and persons interviewed
19/09/1990	New York
	Representatives of non-governmental organizations:
	Americas Watch
	International League for Human Rights
20/09/1990	Guatemala City
	Mr. Ariel Rivera Irías, Minister for Foreign Affairs
	Mr. Jorge Antonio Serrano Elías, Movimiento de Acción Solidaria (Movement for Joint Action - MAS) candidate for the Presidency
	Monsignor Rodolfo Quezada Toruño, President of the National Reconciliation Commission
	Mr. Edmundo Vásquez Martinez, President of the Supreme Court of Justice
	Mr. Mario Roberto Illescas, Attorney-General of the Nation
	Mr. Michael Früling, First Secretary of the Embassy of Sweden in Guatemala
22/09/1990	Observation of a peaceful demonstration in the streets of Guatemala City, organized by the National Council of Displaced Persons of Guatemala (CONADEG)
24/09/1990	Visit to town of Nebaj, Department of Quiché
	Nebaj
	Mr. Jorge Enríquez Cansinos, representative of the Ad Hoc Committee for Aid to Returnees (CEAR)
	Visit to premises of PRODERE (UNDP Development Programme for Displaced Persons, Refugees and Repatriated Persons)

Date	Places visited and persons interviewed
	Village of Xemamatze, Nebaj
	Health centre
	Mrs. Edma Agustín de Romero (CEAR)
	Four indigenous women and two indigenous men admitted to the health centre
	Mrs. Chantal Mannoni, a doctor with the NGO "Enfants Réfugiés du Monde"
	Sacapulas, Department of Quiché
	Visit to the magistrates' court
	Guatemala City
	Mr. Francisco Perdomo, Tenth Judge of the Criminal Court, Guatemala City
	Mr. Amílcar Méndoz, President of the Ethnic Communities Council "Runujel Junam"
	Mr. Roberto Rodríguez, representative of the Office of the United Nations Commissioner for Refugees (UNHCR)
25/09/1990	Deputy Oliverio García R., President, and members of the Human Rights Commission of Congress
	Mr. Carlos Morales Villatoro, Minister of the Interior, and Mr. Mario Cuevas, Deputy Minister
	Col. Julio Caballeros, Chief of the National Police
	Mr. Edgar Enrique Larraondo, President of the Constitutional Court
	Mr. Ramiro de León Carpio, Procurator for Human Rights
	General Juan Leonel Bolaños, Minister of Defence
26/09/1990	Mr. Gabriel Aguilera, Political Secretary of the Partido Socialista Democrático (Democratic Socialist Party - PSD)
	Mr. Mario Sandoval Alarcón, Movimiento de Liberación Nacional (National Liberation Movement - MLN) candidate for the Presidency
	Mrs. Christiane Schulz, International Peace Brigades (NGO)
	Representatives of the Dolores Beloya Foundation, El Pino Estate, District of San José Pinula

Date	Places visited and persons interviewed
	Representatives of the Association of University Students (AEU)
	Headquarters of the NGO "Mutual Support Group" (GAM), meetings with several of its representatives
	National Co-ordinating Committee of Guatemalan Widows (CONAVIGUA)
	Board of the National Association of Secondary Schools (ANEEM)
27/09/1990	Monsignor Próspero Penados del Barrio, Metropolitan Archbishop
	Mr. Jean-Pierre Givel, Representative of the International Committee of the Red Cross (ICRC)
	Guatemalan United Nations Association
	Mr. Giles Bienvenu, Chargé d'affairs, France
	Mr. Factor Méndez, Director of the Centre for Human Rights Research, Study and Promotion (CIEPRODH)
	Directors of the non-governmental Human Rights Commission of Guatemala and of the Guatemalan Mayan Institute of Science
	Board of the Unión Nacional Agropecuaria (National Stock-Breeders' Union - UNAGRO)
	Mr. Carlos Vielmann Montes, Secretary of the Chamber of Commerce of Guatemala
28/09/1990	Board of the Chamber of Agricultural, Commercial, Industrial and Financial Associations (CACIF)
	Mrs. Carmen Rosa de León, Chairwoman of the Ad Hoc Committee for Aid to Returnees (CEAR)
	Mr. Arturo Herbruger, President, and members of the Supreme Electoral Court
	Mr. Alvaro Arzú, Partido de Avanzada Nacional (National Progressive Party - PAN) candidate for the Presidency
	Mrs. María Silvia Utrera Rodríguez and Mr. Hans Mann (witnesses)
	Directors of the workers' co-operative Unión Solidarista Guatemalteca (Guatemalan Pro-Solidarity Union)
	Father Marcelino García and Father Isidro Pérez, representatives of the Confederación de Religiosos de Guatemala (Confederation of members of religious orders of Guatemala - CONFREGUA)
	Mr. Byron Gálvez (witness)

Date	Places visited and persons interviewed
	Representatives of the "Union of National Electricity Board Workers" (STINDE)
	Representatives of the indigenous community of Zacualpa, Department of Quiché.
	Mr. Juan Mendoza, representative of the Comité de Unidad Campesina (Peasant Unity Committee)
	Mr. Sergio Guzmán Muñoz, Co-ordinator of the Unión Sindical de Trabajadores de Guatemala (Trade Union of Guatemalan Workers - UNSITRAGUA)
	Two representatives of the Office of Social Services and Human Rights of the Archbishopric of Guatemala
	Representatives of the Conference of Evangelical Churches of Guatemala
29/09/1990	Santa Cruz del Quiché
	Headquarters of the Ethnic Communities Council "Runujel Junam" (CERJ)
	Mr. Amilcar Méndez (President of the CERJ)
	Mr. Manuel Pérez Alba and four other witnesses, from Chipaca Canton, Chichicastenango
	Mr. Pedro Ixcayá and two other witnesses, from Caserío La Fe, Pujujil Canton, Department of Sololá
	Two minors, Pedro and Micaela Mateo Taquij, from Pachoj Canton, town of Chujuyub, Department of Quiché
	Mr. Juan Tum Mejía, from Parraxtut village, municipality of Sacapulas, Department of Quiché
	Mr. Andrés Yat Tabico, from Choacamán, Department of Quiché
	Mr. Domingo Juárez and Mr. Tomás Lares, from Chorachaj village, municipality of Joyabaj, Department of Quiché
	Mr. Oscar E. Cifuentes Cabrera, Office of the Deputy Procurator for Human Rights
	Mrs. María Antonieta Torres, Justice of the Peace, Santa Cruz del Quiché
	A number of members of civilian self-defence patrols, assembled in a public square in Santa Cruz

Date	Places visited and persons interviewed
30/09/1990	Chimaltenango
	Carlos Enrique Gómez Ruiz and five teachers from the Escuela Nacional Rural Pedro Molino in Chimaltenango
	Chichicastenango
	Father Axel Mencos Méndez, parish priest and Vicar-General of the Diocese of Chichicastenango
	Representatives of the NGO "Mutual Support Group" (GAM)
1/10/1990	Guatemala City
	Mr. Augusto Willemsen Diaz, United Nations Centre for Human Rights adviser on indigenous questions
	Mr. Bruce Harris, Director of the "Casa Alianza" Association
	Mr. Marco Antonio Sagastume Gemmell, United Nations Centre for Human Rights adviser on the teaching and promotion of human rights
	Mr. Silverio de León López, President of the Indigenous Communities Commission of Congress
	Directors of the Institute for the Advancement of the Social Sciences (AVANCSO)
2/10/1990	Panajachel, Department of Sololá
	Meeting with the Procurator for Human Rights and approximately 150 community leaders from the three departments of the Diocese of Sololá
	Santiago Atitlán, Sololá
	Visit, with the Procurator for Human Rights, to the national police post and the local parish
	Guatemala City
	Mr. Vinicio Cerezo, President of the Republic
3/10/1990	Mexico City
	Representatives of the Guatemalan Justice and Peace Committee
	Mr. Juan León, Representative of the Press Agency "ENFOPRENSA"
	Board of the "Centro Exterior de reportes informativos sobre Guatemala" (CERI-GUA) press agency

Date	Places visited and persons interviewed
	Mr. Esteban Garaiz, Deputy Co-ordinator of the Comisión Mexicana de Ayuda a Refugiados" (Mexican Commission for Assistance to Refugees - COMAR)
	Mrs. Carmen Camey and members of the Board of Directors of the Human Rights Commission of Guatemala
	Mr. Luis Bekker and Mr. Francisco Villagrán, representatives of the Guatemalan National Revolutionary United Front (URNG)
	Mr. Rolando Castillo, representative of the Unitary Representation of the Guatemalan Opposition (RUOG)
	Mr. Jorge Santisteban, representative in Mexico of the Office of the United Nations High Commissioner for Refugees (UNHCR)
5/10/1990	Washington
	Mr. Thomas Buergenthal, Judge, Inter-American Court of Human Rights
	Mr. Oliver H. Jackman, President of the Inter-American Commission on Human Rights

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